



***California Department of
Pesticide Regulation***

***ENFORCEMENT
INITIATIVE:***

***Proposals to Improve Enforcement of
California's Pesticide Regulatory Program***

November 1999



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DIRECTOR'S STATEMENT: A Vision for Enforcement

With the advent of a new Administration in Sacramento, it is appropriate to step back for a moment from the daily effort to provide the services to Californians that we are charged to do, and evaluate whether or not we are carrying out our jobs in the most effective manner possible. At the Department of Pesticide Regulation, we are evaluating the broad range of our operations, including our use of information technology, our method for achieving broad stakeholder input into our policymaking, and our manner of communicating the risks that Californians experience when pesticides are used in our state. This is the context in which we conduct this review of our enforcement program.

California's pesticide regulatory program is the most comprehensive and effective in the world. The combination of the statewide guidance and oversight provided by the Department and the local permitting and enforcement provided by the County Agricultural Commissioners makes the pesticide regulatory system in California robust and responsive. California's program covers every corner of the state, with experienced and capable personnel.

Governor Davis has charged his environmental managers with basing regulatory decisions on sound science and with enforcing the law, and it is this latter stipulation that has created the foundation for this review. As is true in any service organization, the operations of the pesticide regulatory program can be improved. After being an independent department for over eight years, DPR would merit by a thorough review of the statutes, regulations and policies that have guided its actions during that time. This report does not provide that thorough review, but does identify a number of changes that can be made in the near future to improve the implementation of the state's pesticide regulatory statutes. It also provides a guide to a myriad of other issues that need to be addressed in the next three years and beyond, to allow California to continue to claim the title of the premiere pesticide management program in the world.

Clearly, California's regulation of pesticides is not perfect. Farm workers and members of the general population continue to be sickened by exposure to pesticides. We continue to find pesticide residues in the state's groundwater, and a number of water bodies are adversely impacted by pesticides running off farmland, golf courses, lawns and city streets. As we review new data on the health and environmental impacts of pesticides, we continue to find risks that need to be mitigated, so that we can fulfill our mandate of allowing pesticides to be used only in a safe manner.

The key to improving our program is the strong enforcement of our laws. If farmers, businesses and homeowners do not comply with the restrictions we place on pesticide use, these toxic chemicals can and do cause problems. Consequently, it is incumbent on us at the Department and on our partners in offices of the County Agricultural Commissioner to ensure that pesticide users understand and comply with the laws and regulations we have established, and that violators are prosecuted. This review identifies the changes we need to make to fulfill this mandate.



IMPLEMENTING CHANGE: Summary of Action Items

This section of our report contains the action items proposed elsewhere in the text. This section serves as both a practical executive summary and as a detailed cross-reference to the text. The Director has also expressed the Department's priorities for implementation by ranking the action items within each major section of the report.

KEY to the tables:

ACTION ITEM = A brief description of the recommended action. A full description appears in the text.

AREA OF ACTION = Areas of action are identified by a combination code based on issues areas and specific topic groupings. For example, technology topics in the area of infrastructure issues would be coded (IT).

Infrastructure Issues (I)-

Multi-Media (IM)
Multi-Jurisdictional (IJ)
Enforcement Tools (IE)

Funding (IF)
Technology (IT)

Operational Issues (O)-

Customer Service (OC)
Performance Standards (OP)

Program Evaluation (OE)

Pesticide Use Issues (P)-

Labels, Permits, and Regulations (PL)

Worker Protection (PW)

PRIORITY OF ACTION = 01, 02, 03, etc. with 01 being the most important.

TYPE OF ACTION = Legislation, Policy, Resources (Augmentation or Management), Rulemaking, or Study.

STATUS OF ACTION = Underway/Short-Term Project, Underway/Long-Term Project, Next 12 Months, Next 13-36 Months, or Needs Further Study.

PAGE = Location of action item in the text.

ACTION ITEM	AREA OF ACTION & PRIORITY	TYPE OF ACTION	STATUS OF ACTION	PAGE
I./II. MULTI-MEDIA CHALLENGES				
I.A.1. Complete the project to submit an executive order to replace D-15-83.	IM-02	Policy	Next 12 Months	P. 15
I.B.1. Establish a systematic process for review of existing memoranda of understanding and agreement.	IM-03	Policy Resources	Underway/ Long-term Project	P. 16

ACTION ITEM	AREA OF ACTION & PRIORITY	TYPE OF ACTION	STATUS OF ACTION	PAGE
I.B.2. Evaluate existing advisory committees. Eliminate redundancy, consolidate committees, and clarify their respective roles.	IM-01	Study Policy	Underway/ Long-term Project	P. 16
II.A.1. Continue to study the issue of media sales of pesticides. Consider new authorities for expanded regulation of these sales, and additional resources to conduct public education and outreach.	IM-01	Study Policy Legislation	Underway/ Long-term Project	P. 17
III. MULTI-JURISDICTIONAL CHALLENGES				
III.A.1. Adopt a State-county policy statement clarifying the enforcement roles and responsibilities of staff at HQ, ROs, and the counties, respectively.	IJ-01	Policy	Next 12 Months	P. 19
III.A.2. Conduct a study to assess the training needs of enforcement personnel at the State, regional, and county levels. Consider ways to encourage participation in a professional exchange program.	IJ-03	Study Resources	Next 13-36 Months	P. 19
III.A.3. Conduct a study to evaluate recruitment and retention issues for enforcement personnel at the State, regional, and county levels.	IJ-03	Study Resources	Next 13-36 Months	P. 19
III.A.4. Participate in the next cycle of sunset review on the SPCB.	IJ-03	Policy	Next 12 Months	P. 20
III.A.5. Augment staffing to strengthen the SSI lead and support function in the ROs.	IJ-01	Resources	Next 12 Months	P. 20
III.B.1. Request a budget augmentation to establish a Border Issues Manager.	IJ-01	Resources	Next 12 Months	P. 20
IV. ENFORCEMENT TOOLS				
IV.A.1. Initiate a comprehensive review of DPR's CEQA functional equivalency.	IE-02	Study	Next 12 Months	P. 21
IV.B.1. Propose legislation making it unlawful for any person to prevent, delay or refuse to permit any audit, inspection, investigation, sampling, or testing to be conducted by State or county personnel.	IE-01	Legislation	Next 12 Months	P. 22
IV.C.1. Study the value and feasibility of creating a compliance assistance unit.	IE-03	Study Resources	Next 12 Months	P. 22



ACTION ITEM	AREA OF ACTION & PRIORITY	TYPE OF ACTION	STATUS OF ACTION	PAGE
IV.D.1. Propose legislation to conform criminal and civil prosecution penalties for pesticide violations for all divisions of the code, and to expand the authority of CACs to levy administrative civil penalties for violations.	IE-01	Legislation	Next 12 Months	P. 23
IV.D.2. Propose legislation to raise the maximum agricultural civil penalty to an amount that would be seen as a significant deterrent by all of the regulated community.	IE-01	Legislation	Next 12 Months	P. 23
IV.D.3. Propose legislation to authorize the Director to file a misdemeanor charge against anyone ordering a farmworker to violate provisions of the pesticide laws.	IE-01	Legislation	Next 12 Months	P. 24
IV.D.4. Propose legislation to make it unlawful for any person to refuse or neglect to pay a civil penalty. Allow the CACs to refuse, revoke, or suspend a permit for a failure to pay a civil penalty.	IE-01	Legislation	Next 12 Months	P. 24
IV.D.5. Authorize the Director to issue administrative civil penalties against all DPR license or certificate holders when the CAC takes no action, DPR disagrees with the action or fine level, or the violators operate statewide.	IE-01	Legislation Rulemaking	Next 12 Months	P. 25
IV.D.6. Authorize DPR or the CAC to place conditions on a license or registration in addition to being able to refuse, revoke or suspend these licenses or registrations.	IE-01	Legislation	Next 12 Months	P. 25
IV.D.7. Authorize the use of corrective training as an additional enforcement tool in conjunction with an agricultural civil penalty.	IE-01	Legislation	Next 12 Months	P. 26
IV.E.1. Conduct a comprehensive study of issues surrounding home and garden use of pesticides.	IE-03	Study Resources	Next 13-36 Months	P. 26
IV.E.2. Encourage improvements in consumer packaging of pesticides, such as graphic labeling and single dose packaging.	IE-03	Study Policy	Next 13-36 Months	P. 26



ACTION ITEM	AREA OF ACTION & PRIORITY	TYPE OF ACTION	STATUS OF ACTION	PAGE
V. FUNDING				
V.A.1. Conduct a comprehensive study of all existing and potential revenue streams, and recommend feasible long-term stable funding for the pesticide regulatory program.	IF-02	Study Resources Legislation	Next 13-36 Months	P. 28
V.A.2. Conduct a study of county funding inequities as part of the larger study on long-term stable funding.	IF-03	Study Resources	Next 13-36 Months	P. 29
V.B.1. Augment staff positions for follow-up activities related to PCP and Mill Assessment Receipt and Collection case development.	IF-01	Resources	Next 12 months	P. 30
VI. TECHNOLOGY				
VI.A.1. Continue to pursue additional resources for, and feasibility studies in support of, the acquisition, installation, and maintenance of an adequate technology infrastructure.	IT-01	Resources	Underway/ Long-term Project	P. 30
VI.B.1. Conversion of all computer applications to a common commercial standard is currently underway and needs to be continued.	IT-02	Resources	Underway/ Long-term Project	P. 31
VI.B.2. Accelerate the development, standardization, and use of data collected by DPR.	IT-01	Policy Resources	Underway/ Long-term Project	P. 31
VI.B.2. Undertake another study of the pesticide use reporting system that results in recommendations to improve the quality, timeliness, cost effectiveness, and utility of the reports and the overall use reporting system.	IT-01	Study Policy Resources	Underway/ Long-term Project	P. 31
VI.B.3. Continue expanding the current civil penalties database to include data elements for all enforcement and compliance actions.	IT-01	Resources	Underway/ Short-term Project	P. 32
VI.C.1. Recruit and retain staff in a wider range of classifications incorporating technical and analytical expertise.	IT-02	Resources	Underway/ Long-term Project	P. 33
VI.D.1. Enhance training for State and county staff to develop a working knowledge of available IT resources, and the skills to access and use the information.	IT-01	Resources	Underway/ Long-term Project	P. 33



ACTION ITEM	AREA OF ACTION & PRIORITY	TYPE OF ACTION	STATUS OF ACTION	PAGE
VII. CUSTOMER SERVICE				
VII.A.1. DPR will adopt an environmental justice mission statement intended to assure the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the State.	OC-03	Policy	Underway/ Short-term Project	P. 35
VII.A.2. Adopt a mission statement to serve all customers, regardless of occupation, community standing, or pesticide bias with respect, patience, and due diligence.	OC-03	Policy	Underway/ Short-term Project	P. 36
VII.B.1. Ensure greater public participation in the development, adoption, and implementation of environmental regulations and policies.	OC-01	Policy	Underway/ Short-term Project	P. 36
VII.B.2. Make increased use of the Internet and Press Releases to better inform all stakeholders concerning the regulatory program.	OC-01	Policy Resources	Underway/ Long-term Project	P. 36
VII.B.3. Require all State and county staff to take customer service and communication training classes.	OC-03	Policy Resources	Underway/ Long-term Project	P. 36
VII.B.4. Study the feasibility of establishing and maintaining a toll free complaint hotline staffed by bilingual operators where the public can lodge complaints about pesticide applications or the conduct of regulators, and workers can file complaints about unsafe work practices.	OC-02	Study Resources	Needs Further Study	P. 36 P. 53
VII.B.4. Enhance awareness of the CAC role : distribute job descriptions and 24-hour contact number to public safety officers, emergency services personnel, and other officials. Investigate the feasibility of sending out public information through local utility bills or other city or county mailings.	OC-02	Resources	Next 12 Months	P. 36
VII.B.4. Study the feasibility of making all county and State enforcement offices reachable for emergencies 24 hours a day and 7 days per week.	OC-01	Study Resources	Next 12 Months	P. 36
VII.B.5 Encourage, support, and facilitate occasional community forums hosted by the CAC to address local issues of importance.	OC-01	Policy Resources	Underway/ Long-term Project	P. 37



ACTION ITEM	AREA OF ACTION & PRIORITY	TYPE OF ACTION	STATUS OF ACTION	PAGE
VII.B.6. Study the cost effectiveness of various outreach approaches, and explore ways to assist the counties to select the most efficient outreach elements and gain new resources for this purpose.	OC-03	Study Resources	Next 13-36 Months	P. 37
VII.B.7. Create an ombudsman position within DPR to facilitate external input concerning the effectiveness evaluations of the county programs.	OC-03	Resources	Next 12 Months	P. 37 P. 43
VII.B.8. Evaluate the recommendations of the “People and Pesticides” team and incorporate, as appropriate, those findings into this workplan.	OC-01	Policy	Next 12 Months	P. 37
VII.C.1. Develop a process and augment staff to evaluate continuously emerging issues in enforcement and to systematically incorporate fundamental training in these areas to DPR and CAC staff.	OC-02	Resources	Underway/ Long-term Project	P. 38
VII.D.1. Make every effort to be responsive to public requests for information and to be reasonable in our interpretation of the legal obligations, and appropriate charges, for complying with formal Public Records Act requests.	OC-01	Policy	Underway/ Short-term Project	P. 38
VII.D.2. Incorporate into DPR’s information technology strategy a long-term plan to make the extensive data gathered by the pesticide regulatory program as readily available to the public as possible. Prioritize migrating existing program information, documents and databases to the DPR Website to maximize public access and timely distribution. DPR should seek additional resources to accelerate implementation of this priority.	OC-01	Policy Resources	Underway/ Long-term Project	P. 39
VII.D.3. Undertake a study, with extensive participation of all stakeholder groups, to evaluate the appropriateness and feasibility of a “good neighbor” policy or law in California.	OC-03	Study	Needs Further Study	P. 39



ACTION ITEM	AREA OF ACTION & PRIORITY	TYPE OF ACTION	STATUS OF ACTION	PAGE
VIII. PERFORMANCE STANDARDS				
VIII.A.1. Augment State and county resources as necessary to purge outdated and unnecessary written guidelines and consolidate, clarify, and cross-reference those that remain. Require all policies and procedures to be reviewed on a regular cycle, and amended or rescinded as needed.	OP-01	Policy Resources	Underway/ Long-term Project	P. 40
VIII.A.2. Incorporate all policies and procedures into the program evaluation guidelines to allow DPR staff to evaluate differing county programs against an agreed upon standard.	OP-01	Policy	Underway/ Short-term Project	P. 40
VIII.A.3. Use CACASA to help promote and implement the written guidelines as performance standards.	OP-01	Policy	Next 12 Months	P. 41
VIII.B.1. Promote consistency in enforcement actions. Written guidelines must attempt to ensure that the punishment consistently fits the violation. Fines should be set at a substantial enough level to be a real deterrent. County pilot projects should be established to evaluate various approaches.	OP-01	Policy	Underway/ Long-term Project	P. 41
VIII.B.2. Perform a detailed audit of a large sample of inspection records to determine if appropriate fines have been levied or other sanctions have been imposed for violators.	OP-02	Resources	Next 12 Months	P. 42
VIII.C.1. Develop a decision tree document leading to determinations of when suggested permit conditions should be statewide standards and when CACs can safely select from the conditions to match local conditions.	OP-03	Policy	Underway/ Short-term Project	P. 42
VIII.D.1. Create an Enforcement Innovator Award and Grants Program.	OP-03	Policy Resources	Next 12 Months	P. 42



ACTION ITEM	AREA OF ACTION & PRIORITY	TYPE OF ACTION	STATUS OF ACTION	PAGE
IX. PROGRAM EVALUATION				
IX.A.1. Incorporate the recommendations of the Mill Assessment Disbursement and Effectiveness Evaluation teams regarding performance standards into this workplan.	OP-01	Policy	Next 12 Months	P. 44
IX.A.1. Conduct a study with the CACs and external stakeholders to identify objective performance measures for effectiveness evaluations.	OE-03	Study	Next 13-36 Months	P. 44
IX.B.1. Periodically conduct a survey of a random sample of people who have filed complaints to a CAC office to determine if they are satisfied with the CAC response.	OE-02	Resources	Next 13-36 Months	P. 44
IX.B.2. Make CAC evaluations readily available to each Board of Supervisors and the public, as requested.	OE-02	Policy	Underway/ Short-term Project	P. 44
IX.B.3. Consider the value of requiring the CAC annual Report 5 to DPR to include more narrative information rather than widget counts.	OE-01	Study	Next 12 Months	P. 45
IX.C.1. Augment staffing to sufficiently increase the number of annual compliance assessments to generate valid data for trend analysis, issue prioritization, and program evaluation.	OE-01	Resources	Next 12 Months	P. 46
IX.D.1. Augment staff to coordinate, conduct, and document the annual effectiveness evaluations at a more appropriate level of scrutiny and detail.	OE-01	Resources	Next 12 Months	P. 46
IX.E.1. Establish a new program to provide continuous program evaluation and improvement in the State and county pesticide use enforcement programs through ongoing research and analyses of goals, priorities, and performance indicators.	OE-02	Resources	Next 12 Months	P. 47
IX.F.1. Enact legislation to provide DPR with the authority to convene and lead a trial board to decide on potential decertifications and removals of CACs for cause. This legislation should also specify that DPR is responsible for licensing the CACs for pesticide regulatory activities	OE-01	Study Legislation	Next 12 Months	P. 48

ACTION ITEM	AREA OF ACTION & PRIORITY	TYPE OF ACTION	STATUS OF ACTION	PAGE
IX.F.2. Dedicate staff resources to work with CACs and their County Board of Supervisors to build stronger relationships and a support network for disciplinary action.	OE-02	Policy Resources	Underway/ Long-term Project	P. 48
X. LABELS, PERMITS AND REGULATIONS				
X.A.1. Revise policies to clarify how to better identify sensitive sites for the purpose of applying for, and issuing, a county restricted material permit.	PL-01	Policy	Underway/ Long-term Project	P. 50
X.A.2. Study various ways to make the restricted material permit or Notice of Intent more precise as to the time of application without jeopardizing the functional equivalency of the program under CEQA, especially for the coordination of worker activities and notification of neighbors.	PL-02	Study	Next 12 Months	P. 50
X.A.3. Clarify terms in the pesticide drift laws and regulations to improve the enforceability of the program.	PL-01	Regulations	Underway/ Short-term Project	P. 50
X.B.1. Develop curriculum and provide training to CACs in understanding their obligations under our CEQA-certified, functionally equivalent program, so that feasible mitigation measures and feasible alternatives are properly considered.	PL-01	Resources	Underway/ Long-term Project	P. 51
X.C.1. Document all drift or misuse allegations to analyze trends, and institute mandatory site visits in areas with repeated inquiries and/or complaints.	PL-01	Policy Resources	Underway/ Long-term Project	P. 51
X.C.1. Refine and make publicly available standard protocols for responding to drift complaints - including urban drift.	PL-01	Policy	Underway/ Short-term Project	P. 51
X.C.2. Evaluate the budget for CAC investigative sampling and support increased funding as necessary.	PL-02	Study Resources	Next 12 Months	P. 51
X.C.3. Require frequent mandatory site visits of applications near sensitive sites.	PL-02	Policy Resources	Next 13-36 Months	P. 51
X.C.4. Consider changing use restrictions, in addition to monetary penalties, in order to prevent re-occurrence of incidents of drift or misuse.	PL-02	Policy Study	Underway/ Long-term Project	P. 51

ACTION ITEM	AREA OF ACTION & PRIORITY	TYPE OF ACTION	STATUS OF ACTION	PAGE
X.C.5. Study the need for authority to refuse or revoke an Operator I.D. for violations or negligence	PL-02	Study Legislation	Next 12 Months	P. 51
XI. WORKER PROTECTION				
XI.A.1. Augment resources to staff a "workplace evaluation response unit" to follow-up on complaints.	PW-01	Resources	Next 12 Months	P. 53
XI.A.2. Take reasonable enforcement actions against workers who are properly trained in the use of, and provided with, appropriate protective clothing, but refuse to wear it.	PW-01	Policy	Needs Further Study	P. 53
XI.A.3. Consider requiring posting of pesticide applications at the perimeter of all fields under restricted entry intervals with signs with expiration dates in addition to verbal warnings.	PW-01	Study	Next 12 Months	P. 53
XI.A.4. Enhance recruitment and hiring of bilingual inspectors.	PW-01	Resources	Underway/ Long-term Project	P. 53
XI.A.5. Conduct bilingual pesticide education and community outreach for farmworkers, including training in pesticide safety issues.	PW-02	Resources	Underway/ Long-term Project	P. 53
XI.A.6. Require posting of the hazard communication PSIS leaflets at the work site.	PW-01	Rulemaking	Next 12 Months	P. 53
XI.B.1. Ensure that DPR has continued access to the Workers' Compensation records essential to the pesticide illness surveillance program.	PW-01	Legislation	Next 12 Months	P. 54
XI.B.2. Study options, including legislation, to strengthen the physician reporting law, possibly giving enforcement authority to DPR or the Department of Health Services.	PW-02	Study Legislation	Next 13-36 Months	P. 55
XI.B.3. Study feasibility and options for requiring employers to report when a physician, nurse practitioner, or company doctor treats an employee.	PW-01	Study Legislation Regulations	Next 13-36 Months	P. 55
XI.B.4. Consider funding poison control centers (PCCs) to report pesticide-related cases for physicians with whom they consult.	PW-02	Study Resources	Next 12 Months	P. 55
XI.B.5. Change the regulations to strengthen the prohibition of employer retaliation in Title 3 CCR.	PW-01	Regulations	Next 12 Months	P. 56

ACTION ITEM	AREA OF ACTION & PRIORITY	TYPE OF ACTION	STATUS OF ACTION	PAGE
XI.C.1. Ensure all relevant parties are interviewed during an investigation, and conduct interviews in safe locations, to prevent retaliation against workers.	PW-01	Policy	Underway/ Long-term Project	P. 57
XI.C.2. Augment staff to ensure adequate evaluation of the quality of an employers whole training program by evaluating the written program, its delivery, and the comprehension of the employee.	PW-02	Policy Resources	Next 12 Months	P. 57
XI.C.3. Augment staff to enhance training for industries using antimicrobial products to improve their understanding of the pesticide regulatory requirements and allow employers to make the proper safety decisions.	PW-02	Policy Resources	Next 12 Months	P. 57
XI.C.4. Investigate all pesticide-related illnesses or injuries sufficiently to determine if mitigation measures are needed. Augment WH&S staff to provide occupational safety expertise for illness and injury investigations assistance.	PW-02	Policy Resources	Next 12 Months	P. 58
XI.C.5. Study the costs involved in making translators available to CAC staff who conduct investigations where no bilingual staff are available.	PW-01	Study Resources	Next 12 months	P. 58
XI.D.1. Increase awareness of the Pesticide Illness Surveillance Program (PISP) by increasing the visibility of the data. Greater visibility may increase physician compliance.	PW-02	Resources	Underway/ Long-term Project	P. 58
XI.D.2. Augment resources to more fully analyze PISP data and use that information to improve the regulatory program.	PW-02	Resources	Underway/ Long-term Project	P. 59
XI.D.3. Evaluate structural pest control by pest control operators, building managers, and maintenance staff for illness trends.	PW-02	Resources	Underway/ Long-term Project	P. 59
XI.D.4. Evaluate backpack sprayers and other high-risk methods of application to determine if they protect the health of the operator.	PW-01	Resources	Underway/ Long-term Project	P. 59

ENFORCEMENT PROGRAM CHALLENGES: Introduction

To many, “initiative” connotes a beginning. For the Department of Pesticide Regulation (DPR), it means renewing the energy, enterprise, and determination that our organization brings to its mission. The enforcement initiative gives us the opportunity to ask others and ourselves: “What can we do better?” While we continually assess the things we do and how we do them, we also need to recognize long-standing efforts to maintain a program we continue to promote proudly. In that vein, it is interesting to note that there was a general consensus among project participants that **the single biggest improvement that could be made in the enforcement of California’s pesticide regulatory program would be to communicate often, openly, and with data, how really effective our program is.**

California has a multifaceted pesticide regulatory program that was officially recognized in 1935, and continues to provide commendable service to our stakeholders to this day. Since that time, both the State and county programs have grown to encompass not only agricultural considerations but also urban pesticide use issues, environmental contamination, worker safety, endangered species protection, and community relations. Between DPR and the county agricultural commissioners (CACs), we have the largest staff devoted to pesticide use enforcement in the nation. Our licensed and credentialed staff are college educated and trained to respond appropriately to the diverse situations they encounter daily. For fiscal year 1997/1998, the CACs:

- \$ conducted approximately 57,000 pesticide use inspections, 8,000 records inspections, and 2000 investigations;
- \$ issued 48,000 permits and evaluated 200,000 Notices of Intend to apply restricted use pesticides;
- \$ certified and licensed 19,500 private applicators;
- \$ identified 5,300 noncompliances and took 6,700 compliance and enforcement actions as a result;
- \$ provided training and outreach to almost 34,000 people.

The pesticide enforcement program will improve through this critical appraisal of its strengths and weaknesses. We believe our program can continue to meet the increasingly complex demands placed on it by ourselves and our stakeholders by encouraging our staff to be both proud and critical of the activities they conduct. The suggestions for improvement included in this document will make a good program better.

This enforcement initiative is a high priority review of the enforcement aspects of the pesticide regulatory program. This review evaluates the various factors associated with the manner in which the Department and the County Agricultural Commissioners maintain compliance by the regulated community with California’s pesticide statutes and regulations, and the enforcement actions that the Department and Commissioners take against those who violate these laws.

**California Department of Pesticide Regulation
Enforcement Program Review**

The importance of the project is reflected in the selection of the project participants. Top management from DPR and a Regional Office are teamed with six CACs and complemented by a mix of staff with enforcement expertise.

Team Sponsors:

Paul Helliker, Director
Paul Gosselin, Acting Chief Deputy Director
Sharon Dobbins, Chief Counsel
Doug Okumura, Acting Assistant Director

Team Members:

Dennis Bray (Kings CAC)
Frank Carl (Sacramento CAC)
Sue Edmiston
Cato Fiksdal (Los Angeles CAC)
Al Lomeli (Central Regional Office)
Danny Merkle
Mona Montano
Steven Monk (Team Leader)
Mary Pfeiffer (Shasta CAC)
Lisa Quagliaroli
Bob Rolan (Madera CAC)
Mark Tognazzini (San Benito CAC)
Muffet Wilkerson

ENFORCEMENT PROGRAM CHALLENGES: Infrastructure Issues**I. Multi-Media Challenges - Part 1**

The pesticide regulatory program is relatively unique among environmental programs. Not only does DPR regulate toxic materials intentionally introduced into the environment, but DPR also administers a truly integrated environmental program. DPR has primary responsibility for regulating pesticide use and its potential impacts on all media: water, air, soil, and biota. As a result, mitigation measures are developed and enforced with cross-media impacts in mind. DPR is its own one-stop shop for pesticide regulation. Unlike many other regulatory programs, DPR has expertise and resources to conduct environmental and human exposure studies, evaluate data, and assess and mitigate risks. These disciplines are interdependent and complementary.

In 1983, Governor Deukmejian issued executive order D-15-83 designating the pesticide regulatory program (then a division within the California Department of Food and Agriculture [CDFA]) as the lead agency for all pesticide-related issues. Since its creation in 1991 by Governor Wilson's Reorganization Plan Number One (GRP-1), DPR has continued in that role. DPR is the agency with primacy over all aspects of pesticide use and regulation in California. DPR is the State agency responsible for determining compliance with pesticide laws, regulations, and labeling.

Several regulatory agencies have general jurisdiction and authority over specific media, such as the Air Resources Board (air), State Water Resources Control Board (water), and the Department of Fish and Game (biota). In recognition of these roles, DPR has entered into a number of memoranda of understanding or agreement with such agencies to ensure a coordinated and effective approach to pesticide regulation regardless of the media impacted. In addition to these written cooperative agreements, DPR engages in frequent interagency consultations. Such consultations may be program-specific. For example, DPR is directed in statute to consult with the Office of Environmental Health Hazard Assessment (OEHHA) concerning the joint adoption of worker protection regulations as well as registration and risk assessment actions. In other cases, the consultation may be more systematic, such as a standing interagency advisory committee. DPR chairs or participates in several advisory committees, such as the Pesticide Registration and Evaluation Committee, the Pesticide Advisory Committee, the Agricultural Pest Control Advisory Committee, and the Pest Management Advisory Committee.

Program Needs and Recommended Actions:

A. Maintain Primacy - Primacy is the cornerstone upon which the integrated environmental program is built. Executive Order D-15-83 still refers to CDFA. While this order is still valid and operative, it can be confusing. With the cooperation of other referenced agencies, the order needs to be updated to properly reflect current roles.

1. DPR should complete a project begun several years ago to draft and submit to the Governor an updated executive order to replace D-15-83.

B. Enhance Coordination – DPR’s efforts to effectively coordinate with other agencies rely upon memoranda and interagency consultations. Many of DPR’s memoranda with other agencies may be out of date or inadequate. Although DPR did establish an archive last year for such documents, a systematic process of review has not been established. There has also been discussion about the effectiveness of some of these cooperative agreements. This is probably due to a general absence of performance measures in these documents. Without measurable outcomes, there is no standard for objective evaluation. In addition, the areas of consultation in the various committees frequently overlap and representation may be spotty in terms of achieving balanced input.

1. DPR should establish a systematic process for review of existing memoranda of understanding and agreement to ensure they are up to date, adequate, and effective. Part of this review process should include the identification of performance measurements that serve as a basis for evaluation and continuous improvement.
2. DPR should evaluate its current advisory committees. The role of each committee needs to be affirmed and the committee’s effectiveness in fulfilling that role assessed. DPR should consolidate committees where possible and appoint representation to balance committee membership where needed. DPR should also establish performance criteria for its committees to enhance the ability to continuously assess and improve the effectiveness and value of each committee. The Agricultural Pest Control Advisory Committee has already supported a recommendation that committee membership be published on DPR’s Website to facilitate contact between represented groups and their representatives. This process should be evaluated and applied to other committees if warranted.

II. Multi-Media Challenges - Part 2

The use of the Internet to purchase products ranging from airline tickets to computers to prescription drugs has increased exponentially in the last several years. More recently, pesticide brokers and/or auction houses have begun offering pesticides for sale via the Internet. In addition to the Internet, pesticide sales are increasing via other media, such as sales catalogs and other direct mailings; newspaper and magazine sales; and telephone solicitations. As a result, pesticide products that have not been evaluated and registered by DPR are offered for sale, sold, shipped into and used within California.

Persons outside California, who offer pesticide products for sale and use in California, have argued the sales transaction occurs outside California and, therefore, the pesticide products they offer for sale and ship into California for use in California are not subject to the State’s pesticide registration laws. Consequently, they take no measures to ensure the pesticide products they offer for sale to persons in California have, in fact, met California’s pesticide registration requirements.

This situation primarily creates concerns for consumer protection and the safety of the public health and the environment. The consumer may fall prey to any number of problems: (a) the pesticide may not be registered for use in California; (b) the pesticide may not be the advertised product; (c) the pesticide may be misbranded or adulterated; (d) the seller may not be properly licensed, making the sale illegal; (e) the pesticide could be stolen; or (f) the pesticide may be illegal to possess or apply due to regulatory restrictions. In addition, the purchaser may not be properly certified or licensed and, thus, may not meet the regulation requirements to possess and use the pesticide products. The pesticide seller or the purchaser may not possess the knowledge, background, or experience to handle or apply the pesticide, which could negatively impact worker health and safety, public health, and the environment.

This situation also can create an unfair market advantage as these media sales frequently offer pesticide products that escape paying registration fees or the pesticide mill assessment fee based on the dollar volume of sales. When this occurs, the State loses revenue which is used to address public safety and enforcement issues created by unregulated sales.

These media sales and purchases potentially involve all levels of enforcement. CACs are involved when they discover a pesticide was purchased through an Internet or written/verbal media sale. DPR staff are involved in assisting the CAC in their investigation and handling any subsequent investigation. Local law enforcement agencies and the State Attorney General's Office are involved when the seller or purchaser is charged with violating any Food and Agricultural Code (FAC) provisions.

Program Needs and Recommended Actions:

A. Limit Media Sales - Media sales will continue to be difficult to regulate. Many, if not most, of these sales originate outside of California, making access to sales records problematic. Currently, subdivision (f) of section 12991 of the FAC makes it unlawful for any person to purchase a pesticide labeled for agricultural use except from a licensed pest control dealer. DPR needs additional resources to enforce this provision. Ultimately, cracking down on media sales of agricultural use pesticides alone will not solve the problem. A similar provision of law requiring the purchase of all pesticides through licensed dealers would be an ideal, if totally impractical, solution. It simply does not make logistical sense at this time to attempt to license all the consumer outlets selling pesticides. However, additional resources could be used to conduct public education and outreach concerning the pitfalls of media sales. Perhaps incentives could even be developed to encourage pesticide purchasers to inform on companies making solicitations for unregistered products.

1. DPR should continue to study the issue of media sales of pesticides. In particular, DPR should consider whether existing FAC authorities need to be expanded, or regulations need to be revised, to better ensure that all sales of pesticides conform to California registration requirements and other laws protecting the public health and safety. Additional resources should be requested to enforce existing requirements concerning agricultural use product purchases, to conduct public education and outreach, and to gain public support for turning

in businesses and individuals soliciting sales of pesticides outside the boundaries of the law.

III. Multi-Jurisdictional Challenges

DPR is responsible for a multi-tiered enforcement infrastructure. DPR is vested with primary responsibility to enforce pesticide laws in California. Three Regional Offices (Ros) operate in Anaheim, Fresno, and West Sacramento, respectively, under the direction of DPR's Pesticide Enforcement Branch (PEB). The Ros provide oversight, training, coordination, and technical support to the county enforcement programs and the CACs, who enforce pesticide laws and regulations at the local level.

There are two additional elements of pesticide regulation that are not directly administered by DPR, although the CACs have varying degrees of involvement with the local programs. The Structural Pest Control Board (SPCB), within the Department of Consumer Affairs, administers the State's licensing of structural pest control businesses and structural applicators. The Department of Health Services (DHS) oversees the activities of local vector control agencies. DPR and SPCB have a memorandum of understanding that guides the interactions of the respective programs. DPR registers pesticides and devices used in structural pest control. SPCB enforces licensing provisions and ensures consumer protections. DPR and DHS also have a memorandum of understanding that covers, in part, mutual areas of interest regarding vector control practices.

In addition to the layers of jurisdiction in California, there are jurisdictional roles played out at the international border. The citizens of the United States and Mexico work and live in close proximity along the California-Baja border. Likewise, pesticide use occurs on both sides of the border and affects the citizens of both countries. Farmers have property in both the U.S. and Mexico and make pesticide applications wherever pest control is needed. Pesticides may be purchased in one country and used in another, both legally and illegally. Pesticide users and farmworkers may work on one side of the border and live on the other. Illegal pesticide use may occur anywhere along the California-Mexico border.

DPR participates in two federal border projects. The first is the Pesticide Emergency Response Plan (PERP), a U.S. Environmental Protection Agency (U.S. EPA) special project grant that identifies individuals and agencies responsible for the initial emergency response and the investigation of pesticide incidents along the California/Mexico border. The second project is the U.S./Mexico Pesticide Information Exchange Project, another U.S. EPA-funded project that cooperatively addresses common pesticide issues along the entire U.S./Mexico border. These projects are limited in scope with unsure funding. DPR spreads responsibility for these projects and other border issues amongst several field and headquarters staff. The Imperial and San Diego CACs are also involved and heavily impacted by activities at the border.

Program Needs and Recommended Actions:

A. Reinforce Multi-Tiered Enforcement Program – Over the course of time, there have been many discussions about reconfiguring the enforcement infrastructure, but a better system has yet to be devised. While there are issues with the existing multi-layered structure (many of which are addressed in this report), the State and county partnership is the core strength of the program. To this partnership, the State brings a depth of scientific and regulatory expertise, and a statewide vision for enforcement. The counties bring a breadth of expertise, local experience, and a more intimate vision for the needs of their community. At its best, this partnership becomes more than the sum of its parts, but such an extensive partnership requires much attention and mutual respect. It is easy to take partners for granted, to lose a unified perspective. This vital partnership needs renewal. There is a need for more training and monitoring of enforcement personnel. Successful enforcement actions rely upon thorough and well-documented inspections and investigations. The Ros are designed to provide ongoing training and serve as the primary quality control mechanism for county enforcement activities. To fulfill this role, Ros need additional staff resources and enhanced training. State and county enforcement personnel should participate in cross training and development assignments in each other's respective jurisdictions. This would require State personnel to acquire the certification to operate a county program, or a change in the law to clarify that State and county personnel are authorized to work at either level.

The quality of enforcement personnel bears directly on the quality of the enforcement program. It is important that well-trained and experienced enforcement staff at all levels be retained. Frequently this has not occurred as staff have been attracted to similar positions in other environmental programs where the compensation is better. This situation has been somewhat improved with a recently approved reclassification study and salary adjustment, yet certain inequities remain in some classifications.

1. Despite the strengths of the State-county partnership, there remain some ambiguities and debate concerning the respective roles and responsibilities of State staff (both headquarters and RO staff) and the CACs. DPR and the CACs should adopt a joint policy statement clarifying their respective enforcement roles and responsibilities.
2. Conduct a study to assess the training needs of enforcement personnel at the State, regional, and county levels. The study should consider ways that DPR could create incentives for, and remove obstacles to, participation in a professional exchange program encouraging staff to take training and development assignments within another level of the enforcement program. The study should also consider the application of continuing education requirements for staff.
3. Conduct a study to evaluate recruitment and retention issues for enforcement personnel at the State, regional, and county levels. The study should evaluate potential pay inequities and other impediments to recruitment and retention.

4. Participate in the next cycle of sunset review on the SPCB to assist in an evaluation of options for consolidation or improved coordination with the structural pest control program. A similar study should also be applied to the vector control program.
5. DPR currently has two Senior Special Investigator (SSI) positions located in the Sacramento HQ to review investigations and case files submitted by Ros for licensing action or for further enforcement action by the Attorney General's Office. An SSI may assume the lead in pesticide investigations that create a conflict of interest for CACs, in a multi-county investigation, or in investigations needing additional case file preparation. DPR should consider strengthening the SSI lead and support function in the ROs by augmenting staff. This could improve the quality and consistency of investigation and case files for CAC administrative civil actions, and State licensing and enforcement actions.

B. Address the Border Challenge – DPR should strengthen its commitment with other Border States and the U.S.EPA on pesticide enforcement and multi-media environmental issues. Resources for this commitment are limited. DPR needs to add a position to serve as Border Issues Manager, responsible for providing technical assistance, enforcement support, and expertise regarding pesticide issues along the California/Mexican Border. DPR would use the manager to establish contacts with Mexican growers and agencies responsible for the import of commodities in order to identify and track the origin of illegal residues.

In addition, the manager would work on Tribal issues and represent DPR on related workgroups, task forces, and committees. Several tribal reservations are located on and near the U.S./Mexico border. Many Tribes lease property for agricultural operations. Tribal lands are considered sovereign nations. When appropriate, DPR would like to enhance its presence and provide support to Tribal environmental agencies. The manager would make contacts with Tribal authorities and federal representatives, coordinate State and local response to regulatory issues, be a resource on Tribal issues to DPR, and support local or State investigations of pesticide laws.

1. Request a budget augmentation to establish a Border Issues Manager who will provide technical and enforcement support regarding pesticide issues on the California/Mexico border and with Tribal nations.

IV. Enforcement Tools

The legal authority for the pesticide regulatory program is found primarily in Divisions 6 and 7 of the FAC. These legal provisions, and the regulations adopted pursuant to them, give DPR, the CAC's, or their respective representatives broad authority to access private property for enforcement activities such as audits, inspections, investigations, sampling, or testing. In the past, the courts have consistently upheld broad authority supporting such enforcement activities even in the face of refusals to comply. These laws also authorize DPR and the CACs to discipline violators through various types of sanctions and to protect the public by prohibiting or stopping hazardous activities. Enforcement tools include:

- a) Administrative Civil Penalties initiated by the CACs or, for certain violations, by DPR;
- b) Refusal, revocation, or suspension of county registrations or licenses and certificates issued by DPR and CACs;
- c) Civil and criminal court actions initiated by DPR (through the Attorney General) or local prosecutors;
- d) Cease and desist orders issued by DPR or the CAC;
- e) Seize/Hold Produce orders issued by DPR (agricultural commodities that exceed pesticide residue tolerances);
- f) Crop Abatement Orders issued by DPR – allows the destruction of agricultural commodities that exceed pesticide residue tolerance;
- g) Crop Seizures issued by DPR – allows seizure and destruction of agricultural commodities or sites treated with a pesticide not registered for use on that commodity or site;
- h) Prohibit Harvest Orders issued by DPR or CAC – delays harvest until the expiration of a pesticide label preharvest interval or until produce does not carry pesticide residue in excess of tolerance;

This review of enforcement options and authorities has yielded the following areas for potential improvement.

Program Needs and Recommended Actions:

A. Maintain CEQA Equivalency – The California Environmental Quality Act (CEQA) requires, among other things, that an environmental impact report (EIR) be developed and reviewed before issuing a permit for a project that might impact environmental quality. It was determined that it is impractical to require an EIR before registering every pesticide or issuing permits to use every restricted pesticide. Therefore, the Legislature required the State to establish a pesticide regulatory program that would be certified by the Resources Agency to be functionally equivalent to a full EIR for the purposes of CEQA. CEQA equivalency is a critical component of the pesticide regulatory program. It is important to maintain vigilance over regulations that are part of the certified program, including those relating to pesticide registration and evaluation and permits to use certain restricted pesticides.

1. Initiate a comprehensive review of DPR's regulations that are part of the certified program and amend the regulations, if necessary, to improve the program. Assess the status of the mandatory program elements of the functional equivalency to ensure that all aspects of the program are functioning appropriately.

B. Enhance Access for Inspections and Investigations – Under existing law and regulations, DPR and/or CAC staff may enter business premises to make inspections to carry out their duties related to pesticides. These inspections include audits of pesticide sales and use records, inspection of pesticide worker training records, and sampling of produce for pesticide residues. DPR and CAC representatives have occasionally been denied access to business premises subject to such inspections. DPR licensees and certificate holders can be disciplined in a licensing

action, or prosecuted criminally and civilly, for denying DPR or CAC representatives access to their premises upon demand during reasonable hours. Arguably, a duty to permit inspections is implied in the statutory authority to conduct inspections; however, under existing law, it is not unlawful to prevent, delay, or refuse such inspections, thus, persons wishing not to be regulated have little incentive to allow lawful inspections. Also, the regulated community is often confused about the authority supporting such activity as the enforcement agent is often forced to refer to several sections of statutes and regulations. A consolidated declaration in the law would significantly clarify the situation and assist compliance.

1. Propose legislation to add a provision to Division 7 of the FAC making it unlawful for any person to prevent, delay or refuse to permit any audit, inspection, investigation, sampling, or testing authorized by specified provisions of existing law, and regulations adopted pursuant to those provisions, upon demand of the DPR Director or the CAC, or their authorized agents, during reasonable business hours, or at any other reasonable time if necessary to ensure immediate compliance. Also, there is a need to amend FAC section 12999.5 to authorize CACs to levy an administrative penalty for a violation of the provision making it unlawful to prevent, delay, or refuse such inspections.

C. Add Consultation/Compliance Assistance Role – During the 1998 Legislative Session, Senator Kelley introduced a bill (SB 1831) to authorize DPR to develop and implement a compliance assistance program. Compliance assistance usually consists of onsite visits to regulated business entities in order to: (1) provide consultation and advisement regarding compliance with pesticide laws; and (2) to identify and correct violations without penalty. While operating such a program is not inconsistent with general authorities, DPR lacks clear statutory authority for a formal consultation or voluntary compliance program. For comparison purposes, a consultation unit has been operating for more than two decades within the Department of Industrial Relations, Division of Occupational Safety and Health, as a complement to its enforcement unit. Division staff visit worksites upon request of the employer to offer recommendations to reduce the likelihood of employee injury and illness. Employers that enlist consultation services are immune to citation for deficiencies, but must agree to correct any worksite risks found, and are subject to cease and desist orders if imminent hazards are identified. High risk employers that do not agree to consultation visits are automatically referred to the division's enforcement unit.

1. Establish a study to investigate the value and feasibility of creating a compliance assistance unit. It is essential that new and separate resources be dedicated to the compliance assistance unit, if one is created, so that no diminishment through redirection occur with existing enforcement resources. Staff in a compliance assistance unit should be trained in occupational safety not just enforcement of laws. The study should consider any change in program authority that may be necessary and potential funding sources. DPR should evaluate the experiences of San Diego and San Luis Obispo Counties in their pilot project efforts to establish a local consultation role before making its recommendations.

D. Add to or Enhance Existing Penalties – The current penalty authority in the FAC may limit the ability of DPR and the CACs to address emerging issues and compel compliance with current and proposed laws and regulations. This authority may have been adequate when the pesticide regulatory program was less comprehensive, and the environmental and health issues were simpler. Our penalty authority should now be broadened to meet the needs of a program that becomes more complex each year.

There are discrepancies in the statutes regarding penalties for violations of the State's pesticide laws and regulations; and a few of those laws are in FAC Division 13, but the majority of those laws are in FAC Divisions 6 and 7. These discrepancies result in confusion to DPR and CAC staff and the regulated community. Unequal criminal and civil prosecution penalties depend on which pesticide law or regulation is violated. The CACs are able to administratively levy civil penalties for some, but not other, pesticide use violations. Criminal and civil penalties are substantially less for pesticide law violations of Division 6 and Articles 6 and 7, Chapter 1, Division 13 of the FAC than for pesticide law and regulation violations of Division 7 of the FAC. CACs have no authority to levy administrative civil penalties for Division 13 violations relating to pesticides, so enforcement of these violations are typically not pursued.

1. Propose legislation to amend the pertinent FAC provisions so that criminal and civil prosecution penalties for pesticide violations are the same as in Division 7 regardless of whether the pesticide law or regulation violated is in, or adopted pursuant to, Divisions 6, 7 or 13. Place the provisions of Articles 6 and 7, Chapter 1, Division 13 in Division 7. Amend FAC section 12999.5 to authorize CACs to levy administrative civil penalties for violations of provisions in existing Articles 6 and 7 and regulations adopted pursuant to them.

The FAC allows the CAC to levy administrative penalties of up to \$1000 for each violation. As a result, the total fine may not always present a significant deterrent to future violations and may be regarded as a business expense. The current penalty schedule could also be seen as regressive and unfair because it has a disproportionate effect on individuals who are fined at the same level as the largest corporations.

Existing law also provides that a violation of Article 10.5, Chapter 2, Division 7 of the FAC affecting any worker or workers constitutes a separate offense for each affected worker. This authority may require clarification as to how it applies to worker safety regulations adopted by the Director. The maximum penalty a CAC can levy against a person using a pesticide in conflict with its labeling is \$1,000. Yet, this provision clearly is intended to take into consideration the number of affected parties.

2. The FAC should be amended to raise the maximum agricultural civil penalty to an amount that would be seen as a significant deterrent by all of the regulated community. DPR supports maintaining a minimum level to allow the CAC to impose a penalty proportionate to the violation and violator.

3. FAC section 12985 should be amended to read: “Any person who orders an employee to enter an area posted with a warning sign in violation of any worker safety reentry requirements promulgated pursuant to this article by the director is guilty of a misdemeanor. A violation of this article, regulations adopted by the director, or label requirements affecting any worker or workers constitutes a separate offense for each affected worker.”

Under existing law (both the Business and Professions Code and the FAC), CACs are authorized to initiate administrative civil penalties for violations of pesticide laws related to structural and agricultural uses, respectively, at the county level. The administrative civil penalty process provides for due process to the respondent, including an appeal process. The processes to compel a respondent who has been found guilty to pay their fine are often cumbersome. Currently, some pest control businesses have exploited these the inefficiencies in the processes available to the CAC and flagrantly proceed to conduct their business as usual without paying their fines, making a mockery of the civil penalty process.

Currently, the FAC does not allow CACs to deny restricted materials permits to permittees who have failed to pay agricultural civil penalties assessed against them by CACs. Although some counties have access to resources to try to collect these penalties, others do not. This diminishes the effectiveness of the agricultural civil penalties program especially as it relates to the restricted material permit program.

4. Propose legislation to amend FAC section 12999.5(a) to add, at the end of that subdivision’s current text: “It is unlawful for any person to refuse or neglect to pay a civil penalty levied pursuant to this section.” Also, amend FAC section 14008 to add that any permit may be refused, revoked, or suspended for a permittee’s “failure to pay a civil penalty or comply with any lawful order of the commissioner.” This added authority would likely improve compliance with lawful orders of the CACs, and would help CACs collect civil penalties they have levied.

At the local pesticide enforcement level, CACs have authority in FAC section 12999.5 to issue civil penalties for violations that include pesticide use, records requirements, pesticide residues over tolerance on produce, and other aspects related to pesticide use. Also, the State Attorney General (AG) and county district attorneys (Das) can take civil action against violators. The AG conducts any action taken against DPR licensees. The Director has no authority to take civil penalty action against a grower. However, DPR may on occasion be the more appropriate agency to pursue civil penalty actions, especially for multi-county pesticide incidents or cases of local conflict of interest. DPR needs the ability to pursue administrative civil penalty actions in addition to the CAC’s authority in that area.

DPR licenses and certifies pest control advisers and several categories of pesticide handlers. State licensing action against persistent violators is limited to suspension, revocation or denial of the license or certificate. This hampers DPR’s ability to gain compliance because persistent violators would continue their illegal activities until the director decides to warrant the

investment of resources to pursue license suspension or revocation. The proposed ACP process, through a series of progressive enforcement actions, could be used to gain compliance with pesticide laws and regulations. It would be used by the Director to progressively lead to suspension, revocation or denial of the license or certificate.

5. Propose legislation to amend Division 7, Section 12999.4, of the FAC to authorize the Director to issue administrative civil penalties against any person who violates the sections listed in 12999.5 and expand the section to include all DPR license or certificate holders who are not included in this section. Also, promulgate regulations to amend Title 3, Section 6130, of the California Code of Regulations to reflect the changes made in FAC Section 12999.5. DPR proposes to use this authority when the CAC takes no enforcement action, DPR finds this to be an appropriate enforcement action, or someone operating in more than one county has sufficient violations in multiple jurisdictions to warrant an action beyond the reach of any single CAC.

The FAC requires pest control businesses, pest control advisers, and pilots to register with the CAC before conducting business in that county. The FAC allows the CAC to revoke, refuse or suspend this registration if the registrant violates pesticide laws. CACs in adjacent counties cannot take concurrent action against a county registration unless the registrant is found in violation of provisions of the law in that county as well. Thus, license holders who violate regulatory requirements may avoid disciplinary action at the county level by working in a different county for the duration of the CAC's action. This means that a single CAC cannot implement an effective regional disciplinary program, especially when the violation does not warrant statewide licensing action.

DPR can revoke, refuse, or suspend pest control businesses, pest control advisers, and pilot licenses on a statewide basis. With the exception of a qualified applicator license, the FAC does not allow DPR to condition a license revocation, refusal or suspension on a regional basis. DPR reserves licensing actions for licensees shown to commit serious, repeated, or multi-county violations. DPR and the CACs need authority to respond to certain violations on a regional basis.

6. Propose legislation that would allow DPR or the CAC to place conditions on a pest control business, pest control advisor, pilot or dealer license or registration in addition to being able to refuse, revoke or suspend these licenses or registrations. FAC 12206 already allows DPR to place conditions on a qualified applicator license, in addition to being able to refuse, revoke or suspend this license.

Currently, there is no FAC provision to authorize DPR or the CACs to require corrective training for violators or to charge a fee for such training. The requirement of training for violators in some cases may be more effective than monetary penalties alone, and could be used in addition to fines, suspensions, and other available enforcement tools. Focused training may prevent future violations. Training provided to the violator could include a review of the laws violated, all citable sections, new laws, and how to obtain compliance with those sections. Training could

also focus on other areas of concern that are primary violation problems in a county or region. A violator would be required to develop a written plan as part of the training requirement. The written plan would acknowledge that they understand the violations and have a program in place to comply with the violations. A copy of the plan would be provided to the CAC of the county where the enforcement or compliance action was taken, and a copy would be maintained in DPR's central licensing files. Focused training to address specific violation patterns would require additional resources (staff allocation, training materials, training equipment, facility use, or utilities). It would be necessary to obtain cost recovery to implement this option.

7. Propose legislation to amend appropriate sections in the FAC to authorize the use of training as an additional enforcement tool in conjunction with an agricultural civil penalty. Provide authority for CAC and DPR to be able to obtain cost recovery from the violator attending the training session. Also, require that the development of a written plan be part of the training. A copy of the plan is to be provided to the CAC or DPR.

E. Establish Methods for Home Use Enforcement – Consumers use a significant amount of pesticides. Some estimates have placed the figure for home/residential uses as high as 30 percent of all pounds of pesticides sold in California. DPR believes that these uses contribute to the pesticide residues found in surface and ground waters. Federal and State mandates for environmental protection require DPR to prevent surface and ground water contamination. DPR and the CACs have broad authority to conduct warrantless inspections in closely regulated industries; there is no similar authority with regard to residential users. Instead, the CAC must obtain warrants to conduct pesticide use enforcement activities at sites that are unregulated, such as peoples' homes. DPR needs to carefully study the issues involved in consumer use of pesticides and its regulatory authority relative to those uses.

1. DPR should conduct a comprehensive study of issues surrounding home and garden use of pesticides. Direct regulation of consumers would likely raise a public outcry if not a number of constitutional issues. Therefore, the study should review options for effective outreach and education programs, and potential sources of funding for such activities that historically are very expensive. The study should also review options for additional data to be submitted in support of registrations for home use products that would allow DPR to make better decisions about safety during the registration process.
2. DPR should explore the possibility of encouraging improvements in consumer packaging of pesticides. Labeling with graphics and other user-friendly improvements could provide for better shopping decisions and alert the consumer to areas of concern for safe handling. Also, one dose packaging could minimize the tendency to over purchase and likewise reduce hazardous waste disposal concerns.

V. Funding

In the last several years, the General Fund has provided about a quarter of all funds for expenditure for the State's pesticide regulatory program, including funds subvented to local agencies. Two other substantial fund sources are the DPR Fund and the Food Safety Account, both of which rely primarily on fee revenues.

The DPR Fund revenues consist of three primary sources: mill assessments, annual certificates of product registration, and pesticide-related business licenses along with minor amounts from penalty assessments, earned interest, and other miscellaneous amounts.

For each dollar of sales of a pesticide registered and labeled for use in California, including spray adjuvants, a mill rate is assessed. (One mill is equivalent to \$0.001 or 1/10th of one cent.) The mill assessment rate was originally established in 1971 at 8 mills. Under current law, the rate was 15.15 mills from January 1, 1998 through March 31, 1999 and increased to 17.5 mills beginning April 1, 1999. Between January 1, 1998 and January 1, 2003, the Director has the authority to lower the mill rate, with certain restrictions. Without intervening legislative action, the rate sunsets to 9 mills effective January 1, 2003. In addition, between January 1, 1998 and January 1, 2003, the Director may collect an additional assessment of up to three-fourths mill to directly support or augment the funding of CDFA's pesticide consultation activities.

Payment of the mill assessment is due quarterly, to be submitted to DPR no later than one month after the close of each calendar quarter. Products registered for reformulation (sold to someone who then repackages and registers the product) or products registered by governmental agencies are exempt from the mill assessment requirements.

DPR distributes 6 mills of the assessment revenues to the CACs. Statute limits expenditure of the remaining mill assessment revenues to the program areas authorized by Chapters 2, 3, and 3.5 of Division 7 of the FAC. Those program areas include, but are not limited to, the following major areas of activity: agricultural pest control research, pesticide registration, worker safety, collection of toxicology data and preparation of risk assessments, and regulation of the use of restricted materials and environmentally harmful materials.

In order to sell a pesticide for use in California, manufacturers of, importers of, or dealers in any pesticide must obtain an annual certificate of registration. The annual fee is \$200 per product. The annual certificate expires December 31 of each year. Renewals are considered late if submitted more than one calendar month after expiration. The penalty assessed for late renewals is \$50, plus an additional 10 percent of the original amount due for each succeeding calendar month, up to a total penalty of not more than 50 percent of the original amount due (\$100). Statute authorizes use of these fees for the same purposes as the mill assessments.

Statute requires various pesticide-related businesses (e.g., agricultural pest control business, maintenance gardener, or qualified applicator) to be licensed by DPR and establishes the rate and term of the various licenses. The annual rates vary from \$15 to \$200. Generally, licenses are

issued for two years, with those licenses for persons with last names from “A” through “L” expiring December 31 of the following even-numbered year and licenses for those with names from “M” to “Z” expiring December 31 of the following odd-numbered year.

Generally, license fees may be used for the administration and enforcement of licensing activities, including the issuance of licenses and the regulation of the activities of those licensed. Further, DPR distributes 50 percent of all money received from the pesticide dealer license fees to the counties, based on the number of license holders in each county.

Through December 31, 1998, revenues collected from a surcharge on farm product and produce dealer and food processor annual license fees supported the Food Safety Account within the DPR Fund. Effective January 1, 1999, sufficient monies will be transferred annually from the DPR Fund to the Food Safety Account to cover program activities to ensure that food continues to meet rigorous standards. Activities include pesticide residue monitoring, review of pesticide residue analytical methods, research into alternative pest management practices, pesticide use reporting, and risk assessments on dietary exposure.

Program Needs and Recommended Actions:

A. Establish Long-term Stable Funding – The ability to adequately conduct enforcement actions at the State, regional, or county levels is directly related to the adequacy of the resources devoted to those functions. The fees collected in support of the pesticide regulatory program are generally fixed in statute and have not risen since enactment. The program fees are not a fee-for-service. The fees are not designed to cover the actual cost of the service provided. This is especially true for State product registrations. There are also areas of enforcement program that entail significant workload for which no fee is collected. For example, there is no charge for a restricted material use permit. Funding inadequacies are largely offset by the mill assessment collected on pesticide sales, which generates revenues based on volume of sales. However, the mill assessment fees periodically sunset and require legislative reauthorization. This process has resulted in inconsistent and unreliable funding that has left the program weakened. The regulated community that pays the mill assessment has demanded program cuts or programmatic changes to keep the fees as low as possible. Environmental and public interest groups have demanded higher fees to discourage pesticide use and provide greater program efforts. The funding controversy undermines the stability of the program and impacts planning efforts to maintain credibility.

1. DPR should conduct a comprehensive study of the funding base for the regulatory program, including all existing and potential revenue sources at both the State and county levels. Fee structures should be reassessed and a more efficient means of establishing the mill assessment should be explored. The elimination of the sunset clause and new areas of fee-for-service should be considered. This study should result in recommendations for legislation, rulemaking, and budget changes, as appropriate, prior to the 2003 sunset currently established for the mill assessment.

2. DPR should conduct a study of county funding inequities as part of the larger study on long-term stable funding recommended above. A particular focus of the study should be county cost recovery for issuing restricted material permits.

B. Augment Resources Dedicated to Collecting Penalties and Assessments – Registration and misbranding violations are frequently identified during field inspection activities and during mill assessment receipt and collection activities. Insufficient staffing has resulted in severe reduction of administrative civil penalties for sales of unregistered and misbranded pesticides and failure to collect mill assessments. The rate of combined administrative civil penalty cases for sales of unregistered pesticides, for Pesticide Compliance Program, and Mill Assessment Receipt and Collection Program activities, dropped from an average of 30 cases per year (between 1990 and 1994) to approximately ten cases per year since 1995. With current staff, DPR could only audit every registrant's pesticide sales and mill assessment compliance once every 28 years. Loss of mill assessment revenue caused by sales of unregistered pesticides impacts funding for the entire Department in addition to activities performed by the CACs. Failure to aggressively and consistently administer enforcement actions against violators undermines the integrity of DPR's pesticide registration program and, ultimately, public health and environmental safety.

PEB staff are able to efficiently identify violations and document them, collect evidence and write investigation reports pertaining to unregistered or misbranded pesticides offered for sale in California. Mill Assessment Receipt and Collection staff are able to document and provide evidence of violations. The intake and investigation portions of these activities are working. However, there is a problem specific to follow-up activities. When the investigation reports, or evidence documenting violations, are provided to program staff, there is not sufficient staffing to conduct follow-up activities such as reviewing the investigation report, developing a case theory and file, preparing a notice of proposed action, offering settlements, providing advocacy services when hearings are requested, or a hearing officer to hear the case. In addition, there is insufficient staffing to address unregistered, misbranded, and mill assessment collection issues related to emerging e-commerce.

In 1995, DPR's Product Quality program inspection and investigation activities and procedures were redesigned to be consistent with federal pesticide product investigation activities. The successor program is called the Pesticide Compliance Program (PCP). The major benefit of the PCP program is that the quality of both state and federal inspection and investigation activities improved dramatically. The improvement occurred because field inspectors no longer had to use two distinctly different sets of policies, procedures, and forms for two similar, yet distinct, activities. Many aspects of the PCP program have been successful and have reduced analytical chemistry costs and more efficiently utilized regional office staff hours.

Yet, when the programs were merged, it was assumed that since DPR now had one merged program, it could then reduce one staff coordinator position for activities previously performed under state authority and place them under the oversight of the federal program coordinator. The program merge did not address the impact this staff reduction would make on case

development, notice of proposed action preparation, advocate or settlement activities specific to state violations. Mill assessment receipt and collection activities frequently identify violations such as failure of a registrant to submit a quarterly report, or adding unregistered products to the quarterly report. Previously, these reports were sent to the Legal Office for follow-up activities such as case file development, preparing the notice of proposed action, settlement offers, or advocacy services upon receipt of a hearing was request. Staffing and workload demands in the Legal Office required a shift of follow-up activities to qualified, yet insufficient, staff in the PEB. Mill assessment receipt and collection follow-up activities do not currently exist.

1. DPR should augment staff positions, especially auditors, for follow-up activities related to PCP and Mill Assessment Receipt and Collection case development. DPR should also include PCP violations in the Enforcement Actions Tracking System database.

VI. Technology

DPR conducted a detailed analysis of the licensing and field enforcement programs to identify technology barriers to achieving program objectives. In addition to the extensive networks at its Sacramento Headquarters, DPR has to develop and maintain an information technology infrastructure suitable for three Ros and four satellite offices as well as the 55 CAC offices. In order to provide staff in headquarters, regional, satellite, and county offices with the information technology resources required to meet their legislatively-mandated programmatic and strategic business roles and responsibilities, they would need the ability, at a minimum, to:

1. Access and update RO and Sacramento headquarters client-server databases.
2. Access DPR's internal Website through a secured environment.
3. Access DPR's e-mail and internet mail.
4. Share files among RO and CACs.

Program Needs and Recommended Actions:

A. Improve Infrastructure – RO activities in support of county programs have been impaired because their facilities did not have the telecommunications or network technology to receive, access, or exchange electronic data with the CACs or DPR. The current process is cumbersome and inefficient because county records are not automated and RO staff must travel to CAC offices in order to review case reports and compliance information. This time-consuming process limits the number of cases that county and RO staff can process for potential enforcement action. Since there are no central tracking systems available to the Ros, staff cannot routinely identify violations from the same licensees working in counties outside of their regional jurisdictions. Ideally, the enforcement profile database and other internal enforcement resources should be available to RO and CAC staff 24 hours a day, seven days a week.

1. DPR must continue to pursue the approval of additional resources for, and feasibility studies in support of, the acquisition, installation, and maintenance of an adequate technology infrastructure. In the near-term, DPR must establish and procure minimum

technical standards needed to operate the enforcement program in a uniform, ‘mainstream’ environment (hardware, software), including the Ros. However, there is a clear need for a secure, dedicated system to transmit enforcement and compliance action information from the CACs and ROs to DPR on a daily and/or weekly basis. Thus, the system network must be designed to allow future expansion, enabling counties to join the wide area network.

B. Develop Programs and Improve Database Design – The early separation of enforcement programs by funding source or statutory authority (e.g., tracking agricultural penalties separately from structural civil penalties, and at least three distinct residue sampling programs) contributed to fragmentation in database design and implementation. Databases were most often designed to serve a single purpose in a static format (e.g., annual residue report or civil penalties report). This approach to data management failed to consider relationships among important facets of the overall enforcement program (e.g., relationship of residue violations to compliance action tracking; episode and illness reporting to compliance action tracking; compliance action tracking to licensing renewal).

Until recently, the PEB created data systems based on custom proprietary hardware and software rather than more widely available ‘off-the-shelf’ systems. This approach developed partly because many of the early database efforts were conceived and pursued in the early 1980’s, when the availability of affordable personal computers was uncertain. The initial investment in proprietary systems required the program to expend more effort in installing and maintaining custom hardware and software rather than on developing the analytical tools to effectively use the data.

1. Conversion of all branch and State-supported county applications to a common commercial standard is currently underway and needs to be continued.

There is a consensus among constituents and DPR staff that more data is collected than is effectively utilized. Systems which collect and process data relevant to planning, evaluating, and implementing the enforcement program need to be designed in a way that ensures that the data collected is complete, accurate, and portable between county and state enforcement offices. Some counties maintain local enforcement and non-compliance tracking systems for internal use, but the reporting procedures and formatting requirements vary by county.

The current pesticide use reporting system is the most sophisticated in the nation and has enabled DPR to make well informed, scientifically valid decisions regarding pesticide use and risk mitigation. Increasing the timeliness, accuracy, and efficiency of both the reports and the current use reporting system can enhance the overall value of the pesticide use reports.

2. Improve and accelerate the development, standardization, and use of data collected by DPR (special emphasis on the Pesticide Use Reporting System, and violation histories). To ensure that information is processed in an efficient and effective manner, standardization of state reporting systems should be mandated. DPR should undertake another study of the pesticide use reporting system. DPR may want to consider hiring an outside consultant

with expertise in management information systems to analyze the system. The study should result in recommendations to improve the quality, timeliness, cost effectiveness, and utility of the pesticide use reports and the overall use reporting system. At a minimum, this analysis should address such areas as standardizing the reporting format, site identification procedures, data requirements and technology criteria. The study may also want to consider whether a competitive bidding process for elements of the use reporting system makes sense.

The Legislature mandated and funded DPR to create the Compliance Tracking Program to gather data on pesticide licensees. This data will help DPR track illegal pesticide activities by the same user that may occur in different counties.

3. The current civil penalties database is being expanded to include data elements for all enforcement and compliance actions. The database will be converted to a fully relational model, standardized to conform to DPR legacy system formats, validations, and coding standards. The system will be developed in a commercially available database management software package and run on an existing server which houses the Licensing database. Civil penalties case number assignment and tracking will be performed locally in each RO, which in turn will transmit records to DPR headquarters on a weekly basis to update the statewide database. This automated process will streamline current workload, result in greater staff efficiencies and productivity, as well as improve access to and timeliness of data.

A related table for tracking non-compliances on inspection forms will be created from the existing prototype. Record reporting specifications will be established and distributed to CACs to download and transmit data to DPR in a standard format. A data entry application module will be developed and distributed to CAC offices that do not operate local systems. Another data entry application will be developed to track and report certified private applicators within counties as required by the legislative mandate. Data files from CAC offices will be transferred using methodologies (floppy disk or as an e-mail file attachment) similar to those currently used by the counties to transfer pesticide use data to DPR.

The statewide database will be mirrored to an existing server as an operational recovery measure. The server instance of the database will be used to provide information on the licensing status and compliance profile of licensees to internal clients (Ros and CACs).

C. Acquire and Retain Technical Staff – The evolving sophistication of DPR's IT needs requires staff that have the technical skills (i.e., ability to manipulate hardware and software services such as spreadsheets, databases, and the Internet) and analytical skills (i.e., ability to create meaning from data through statistics; geographic analysis). Enforcement personnel are frequently recruited as graduates of earth or biological sciences, but have little opportunity to apply analytical skills and abilities as part of their assigned duties. Until recently, staff classifications within the program were restricted to the Pesticide Use Specialist series with tasks focused either on performing field duties (e.g., sample collection or county liaison services), or

on the generation of correspondence and policy recommendations based on regulatory interpretation.

1. Recruit and retain staff in a wider range of classifications incorporating technical and analytical expertise (e.g., information technology, statistics, geography, etc.).

D. Better Train Staff to Use IT Resources – In order to use existing technologies effectively, DPR and CAC staff must have a clear understanding of available resources and how to efficiently access them.

1. Enhance training for State and county staff to develop a working knowledge of available IT resources, and the skills to access and use the information.

ENFORCEMENT PROGRAM CHALLENGES: Operational Issues

VII. Customer Service

A major tenet of total quality management is a focus on customer service. Cal/EPA's Boards, Offices, and Departments are statutorily mandated to implement quality programs. Any assessment of the operational issues relative to enforcement of the pesticide regulatory program must begin with the identification of customers. Who are the customers of the pesticide regulatory program? Ultimately, everyone is a customer. The general public, the environmental activist, the farmer, the sanitation engineer, the Legislature, the CACs and their staffs, even DPR's staff are all customers. Yet, each group of customers is interested in a different product or service, and it seems an impossible task to meet their collective, and often contradictory, expectations. It is here, in this quandary, that we encounter the underlying issue evident throughout this segment of our analyses – **perception**. The customer base with which a person identifies affects their perception of the effectiveness of the enforcement program.

Historically, the predominant perception is that the pesticide regulatory program catered to the needs of California's agricultural industry. This perception is generally true of environmental and public interest groups, and often the nonagricultural segment of the regulated community as well. DPR was removed from CDFA in 1991 and established as an independent department in large measure to alter that perception. No longer does the pesticide regulatory program operate within an agency whose mission is to promote agriculture. The mission of DPR is to regulate the use of pesticides to protect human health and the environment. As the local enforcement agents for both DPR and CDFA, the CACs are often perceived as operating under CDFA's mission, including the promotion of agriculture, but this misses the point that the role of the CACs is regulatory. When acting in that role as the local enforcement agents for the pesticide regulatory program, the mission of the CACs is to regulate the use of pesticides to protect human health and the environment.

In addition to working on behalf of CDFA and DPR, the CACs are appointed by, and answer to, the local county Boards of Supervisors. Each Board has its own set of local political pressures that may affect the CACs. Boards have directed actions against CACs both for lack of enforcement action and for too much enforcement action, depending on the pressures of the local community. Since its establishment as a separate department, DPR has not made a focused effort to communicate with Boards concerning mandates, program direction, or policy.

Dealing with such a diverse customer base requires sensitivity and exceptional skill in communication. Good communication requires knowing one's audience. Since the pesticide regulatory program has a diverse customer base, it logically follows that the audience is diverse as well. DPR and the CACs must become adept at recognizing, and communicating to, diverse customers. Willingness to provide customized service must be a primary focus of the program.

Program Needs and Recommended Actions:

A. Serve All Customers Equally Well – DPR’s policy is that all complaints brought to the attention of DPR or the CAC alleging misuse of pesticides or pesticide damage or injury to crops, property, human or animal health must be investigated by the receiving agency or referred to the most appropriate agency for response. DPR reimburses the CAC for any complaints they investigate, provided the CAC produces a written investigation report. To help DPR identify state and national trends, DPR directed the CACs to track all complaints investigated and provide this information to the ROs. This tracking log also provides the CACs with a method to identify issues of local concern.

The level of complaint investigation, documentation, completeness, timeliness, and tracking varies widely between CACs. DPR staff provides training to CAC staff and reviews many investigations before completion. DPR staff emphasizes the importance of investigating all complaints, documenting the results and conducting appropriate follow-up, such as an enforcement action when violations are found. CACs responsive to the public’s complaints resolve many misconceptions about pesticide use; they provide reassurance that they are unbiased and that compliance with regulatory requirements is a local priority.

DPR has written policies concerning complaint response, provides investigation training, and evaluates the effectiveness of the CACs’ investigations. There are no regulatory requirements that set standards for complaint response. As a result, CACs differ in the way they respond to complaints, address violations or problems arising from the complaints, produce investigation reports, maintain records, and fulfill records requests. While external stakeholders expect some difference between counties, there are customers who feel some CACs do not take all complaints equally seriously and do not adequately investigate, document, or track all the complaints they receive.

1. Consistent with Senate Bill 115 (Chapter 690, Statutes of 1999), DPR will adopt, and will recommend that the CACs adopt an environmental justice mission statement intended to assure the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the State. DPR and the CACs will conduct programs, policies, and activities, and promote enforcement of all health and environmental statutes within our jurisdictions in a manner reflective of this mission statement.

Beyond the environmental justice distinctions of race, culture, and income, DPR and the CACs will adopt a mission statement to serve all customers, regardless of occupation, community standing, or pesticide bias with respect, patience, and due diligence. We will jointly promote aggressive and fair enforcement of all regulated industries, believing that in so doing we best serve those industries as well as the public and the environment. Vigorous enforcement enhances the credibility of the industry. A safer workplace benefits business by reducing costs in worker’s compensation losses, reducing lost work time, and avoiding monetary penalties and civil suits.

2. Develop, at a minimum, clear policy guidelines that set specific requirements regarding complaint response (timely, unbiased), documentation (complete), and tracking. Incorporate this policy into the county program evaluations and evaluate CAC programs by the same standard. This guidance document should also clearly state that bias in the conduct of the State's business, or denigration of individuals or groups who may be critical of the enforcement program, is unprofessional and inappropriate, and subject to disciplinary action. DPR should monitor carefully the statewide compliance with this policy and include it in the signed contracts approved by the Boards of Supervisors.

B. Promote Outreach, Education, and Community Involvement – Many customers of the pesticide regulatory program are unaware of the policies and procedures governing DPR and the CACs, or recent initiatives undertaken by either (or both) to improve that program. This lack of awareness affects stakeholder ability to comply with the law and limits feedback necessary to improve the program. Some State, regional, and county outreach efforts have produced moderate success in diffusing perception issues and merit an expanded, statewide effort to enhance education, communication, and outreach.

1. Consistent with Senate Bill 115 (Chapter 690, Statutes of 1999), DPR and the CACs will ensure greater public participation in the development, adoption, and implementation of environmental regulations and policies.
2. DPR will improve its Website and press releases to better inform all stakeholders concerning the enforcement program. DPR will also encourage each CAC to create a county program Website and to use it as a tool to reach the local community with more information. Websites can facilitate public understanding of, and access to, the enforcement program. Unfortunately, some counties have adopted policies limiting the development of Websites and there can be considerable costs involved in developing and maintaining such sites. Thus, DPR should prioritize this topic as part of its overall information technology initiatives and evaluate ways to assist the counties to secure adequate funding.
3. As part of its quality management program, DPR requires all State staff to take a customer service training class. This requirement should be extended to all RO and CAC staff as well. In addition, a refresher class should be periodically required. DPR should make a concerted effort to adapt the curriculum to ensure that staff are adequately trained in our mission to serve all customers equitably and effectively. The course should also train staff in effective communication skills so that they are able to adapt their message as appropriate for the audience. Communication skills for key staff should also include training in risk communication.
4. DPR should study the feasibility of establishing and maintaining a complaint hotline where the public can lodge complaints about pesticide applications or complaints about the conduct of regulators that they feel have not been adequately addressed. The hotline would

have to be toll free and should probably be staffed by bilingual operators. As equipment, service, and staffing could take considerable resources, the cost of this effort, and potential revenue sources, should be evaluated. The potential for contracting for such service should also be considered, as would the need to heavily promote the purpose and availability of the hotline. In addition, DPR should study the feasibility of making all county and State enforcement offices reachable for emergencies 24 hours a day and 7 days per week. At a minimum, a flyer explaining the CAC job description and role in the community should be distributed to public safety officials (fire, police, sheriff) and key city and county officials with a 24-hour contact number for emergencies. Local hazardous materials training should specify that the CAC must be called immediately whenever pesticides are a suspected source of illness or odor complaint. It would also be advisable to improve information on the pesticide regulatory program, especially at the regional and county levels, in the government sections of local phone directories. CACs should also investigate the feasibility of sending out information through local utility bills or other city or county mailings.

5. CACs should consider hosting occasional community forums to address local issues of importance. DPR and RO staff should encourage, support, and even facilitate such efforts as appropriate.
6. Effective community outreach could take considerable resources, both human and financial. Community outreach must extend to all stakeholders/customers. The outreach program of San Luis Obispo County could be used as a model. To ensure that outreach efforts are not neglected, a requirement for outreach efforts should be included in the negotiated workplans for each county. However, unless additional resources are put into the program, including this activity in the negotiated workplan will simply shift resources at the expense of another activity. Therefore, DPR should study the cost effectiveness of various outreach approaches, and explore ways to assist the counties to select the most efficient outreach elements and gain new dedicated resources for this purpose.
7. DPR should consider creating an ombudsman position within the Department to provide external input concerning the effectiveness of the CAC complaint response and suggestions for improvements. This position could also investigate complaints concerning the State or county programs. DPR would require additional funds to set up and maintain this new position, and should study appropriate means of funding.
8. DPR and the CACs have sponsored a quality team, called the People and Pesticide Team, to specifically review issues of public perceptions and communication concerning the pesticide regulatory program. This team is close to completing its review of issues and submitting its recommendations to the Director. DPR should make every effort to evaluate the team's recommendations in light of this report and incorporate, as appropriate, those findings into the Enforcement Initiative Workplan.

C. Train Staff in Evolving Issues – As important as customer service training is (see previous recommendations), DPR, RO, and CAC staff also need to be trained to recognize, understand, and address issues that are newly evolving. It is far too easy to lapse into a “business as usual” mode, especially when your program has gained worldwide respect, but the science and regulatory issues with pesticides are rapidly changing, and we must prepare to meet those needs. Where the regulatory focus at one time may have been planted in row crops or orchards, our investigations now take us into urban streams, endangered species habitat, and our children’s classrooms. Yet, much of the staff training has not kept pace with these regulatory demands. Beyond that, there are significant issues that may not directly impact the enforcement program, but are of paramount concern to effectively communicate with our customers. A regulator who cannot appreciate the debate over use reduction quotas, or exposure scenarios and risk endpoints, may still be able to write a notice of violation, but he or she will never be able to inspire confidence in their leadership. The role a regulator plays in promoting the use of reduced-risk pest management strategies may be limited, but his or her understanding of the issue should not be.

In issuing restricted material permits, the CACs need to evaluate whether the written recommendation for use of a pesticide adequately assessed “feasible alternative(s) which would substantially lessen any significant adverse impact on the environment.” CAC staff needs training in the areas of integrated pest management and pesticide alternatives in order to evaluate these recommendations.

1. DPR should develop a process to continuously evaluate emerging issues in field enforcement and to systematically incorporate fundamental training in these areas to DPR and CAC staff. DPR should immediately consider augmenting staff training in pesticide alternatives and urban issues, among many others. As adequate training can be both time- and resource-intensive, this activity will require new resources. DPR should study the costs and potential funding sources for this training.

D. Acknowledge the Public’s Right-to-Know – As public servants, what regulators do is on behalf of the people of this State. Therefore, regulators must consistently recognize the public’s right to know how policies and procedures are developed, and how decisions are made. The processes of regulation must be as transparent as possible. With transparency comes awareness. An informed public is better prepared both to participate in meeting the goals of the regulatory program (protect human health and the environment) through compliance and in constructive interaction. Federal and State laws (the Freedom of Information Act and Public Records Act, respectively) provide for the disclosure of all but the most selectively protected information. There is more to making the processes of the pesticide regulatory program transparent than the will to do so. Transparency requires the sharing of information and making information readily available to the public often requires significant resources.

1. DPR and the CACs will make every effort to be responsive to public requests for information. Both will attempt to make formal, legal requests as unnecessary as possible, and to have an attitude that promotes appropriate release. When the release of some

information does not serve the greater public good, this decision should be an infrequent, specific, and judicious choice. The charges for providing records to the public should be consistent with legal limitations. To the extent that there is ambiguity about appropriate charges, DPR should work with the counties (including the Boards) to develop consistent and equitable guidelines. If necessary, DPR may need to consider specific statewide legislation or regulations. DPR should develop a model Public Records Act policy that CACs can share with their county counsels in developing county-specific policies.

2. DPR should incorporate into its information technology strategy a long-term plan to make the extensive data gathered by the pesticide regulatory program as readily available to the public as possible. A primary focus of this effort should be to prioritize migrating existing program information, documents, and databases to the DPR Website to maximize public access and timely distribution. DPR should seek additional resources to accelerate implementation of this priority.
3. There has been a national movement to create a right-to-know about pesticide applications in public places or in neighborhoods. Several states have begun to legislate in this arena. California has attempted its own legislation in this area each of the last two years, but only for pesticide use in public schools. Efforts have not obtained sufficient support, though a handful of other states have enacted similar laws. As part of the conditions on permits for the use of California restricted materials, CACs have occasionally required notification to neighbors prior to application. DPR should undertake a study, with extensive participation of all stakeholder groups, to evaluate the appropriateness and feasibility of a “good neighbor” notification policy or law in California.

VIII. Performance Standards

DPR provides policies and procedures to the CACs to promote statewide uniformity and fairness in our pesticide use enforcement program. Problems may arise when CACs do not implement these written policies and procedures, or the implementation in adjacent counties is inconsistent. Some CACs have asserted that DPR’s policies and procedures are guidelines rather than regulatory requirements and, therefore, they allow discretion in implementation and interpretation. As a result, conducting fair and equitable evaluations on programs that can be very different from each other is difficult for DPR staff.

While some laws and regulations do allow CACs to respond to local conditions, the level of discretion creates the misconception that they are accountable only to the regulated industries. External stakeholders are unfamiliar with DPR’s policies and procedures and the role they play in pesticide enforcement activities and program evaluation.

DPR develops policies and procedures to clarify regulatory requirements, to improve environmental and worker safety, to promote uniform enforcement activities throughout the state, and provide DPR staff a basis for conducting a fair evaluation of county programs. When pesticide label use instruction interpretations are included, DPR’s policies and procedures

probably number in the hundreds. As a result, there may well be contradictory instructions that go undetected.

Usually, DPR acts in response to issues raised by the CACs or RO staff. Very rarely does DPR deny a request for a written interpretation even when the subject is clearly covered elsewhere. Once issued, DPR expects all CACs to implement the policy or procedure. Recently, DPR has encountered resistance by some CACs to implementing DPR's policies or being held to this standard by DPR staff during the annual program evaluation. It is not unusual for DPR to issue policies or procedures without consulting past decisions, which leads to contradictory instructions and compounds the difficulty of maintaining a manageable program. This is one of the most serious impediments to a fair and equitable pesticide enforcement program.

Program Needs and Recommended Actions:

A. Written Guidelines – To ensure uniform and effective compliance and enforcement, written guidelines, in the form of enforcement matrices or an enforcement or compliance policy manual, must be developed and followed. The CACs do have written performance guidelines. However, no systematic maintenance for existing written materials has ever been established. As discussed under customer service, these proposed guidelines should acknowledge the role and responsibilities of the CAC. This clarification would determine reasonable expectations and provide a basic benchmark for CAC performance.

1. To be meaningful for the public, the regulated community, and the CACs, DPR must purge outdated and unnecessary written performance guidelines. This will require a review of all policies and procedures from the mid-1970's to present. DPR will need to rescind all Enforcement Letters, information requests, policies and procedures manuals that are incorrect, outdated, or contradictory. Once that is accomplished, DPR must review the remaining guidelines in order to consolidate, clarify, and cross-reference them, ideally, in an online, searchable format. In support of this effort, DPR will need to implement a procedure that allows the PEB to deny future requests to put in writing what is already sufficiently clear. DPR will also need to implement a procedure that requires all policies and procedures to be reviewed on a regular cycle, and amended or rescinded as needed. The one-time purge and cataloging will be a time-consuming, tedious project, requiring staff who are aware of historical decisions. This process will require additional limited term staffing in the PEB and a significant investment of time from the CACs. The long-term maintenance of the new guidelines will require an augmentation in PEB staffing. DPR should augment staff accordingly and also compensate the counties for staff time.
2. Incorporate all policies and procedures into the program evaluation guidelines to allow DPR staff to evaluate differing county programs against an agreed-upon standard. Incorporate the program evaluation guidelines into current regulations that authorize DPR to conduct annual evaluations of the county programs. The Mill Assessment Disbursement and Effectiveness Evaluation teams are currently working on this project and their respective recommendations should be incorporated into the Enforcement Initiative

Workplan.

3. Implement a procedure that uses the County Agricultural Commissioners and Sealers Association (CACASA) to help promote and implement the written guidelines as the performance standards CACs are expected to follow. This cooperative approach to the guidelines should achieve compliance. However, DPR must be prepared to consider promulgating the written guidelines as enforceable regulations, if warranted.

B. Uniformity/Consistency – Uniformity and consistency in the interpretation of State policies by each county is not always achievable. In a sincere effort to achieve uniformity, DPR and the CACASA initiated three key projects: (1) development and implementation of the “Enforcement Guidelines”, a policy to foster consistent statewide enforcement responses; (2) development and implementation of the “Pesticide Use Enforcement Prioritization Plan,” a plan that prioritizes county activities based upon factors such as risk; and, (3) development and implementation of Negotiated Workplans for each county to assist them in more effectively planning activities and resource commitments.

Uniformity issues also exist within the Agricultural Civil Penalty (ACP) and Structural Civil Penalty (SCP) Programs. Confusing language in the ACP fine guidelines (3CCR section 6130) sometimes result in differing interpretations about the penalty level for an offense. Requirements and enforcement responses associated with the SCP Program are not always consistent with the DPR’s ACP Program. This complication is usually attributed to differing licensing and discipline components for structural licensees regulated by the Structural Pest Control Board.

During the past three years, the PEB completed a restructuring of staff positions within the Ros. One goal of this restructuring is to provide more uniform service and information dispersal to CAC staff. Also, during the past two years, the PEB began incorporation of its training and outreach function into its Ros. One goal of the PEB’s training and outreach function is to provide an additional opportunity for promoting uniformity within the CAC and RO structures.

Unintended economic consequences spring from uneven enforcement. When California’s farmers are placed at a disadvantage against competition from other states due to the stringency of the enforcement program, standards cannot be compromised just for the sake of commerce. However, those high standards are often viewed as a marketable advantage or a principled call for the nation to follow. County-to-county standards inconsistencies are different. While some may be unavoidable (farming in areas with vulnerable ground water), other factors are due largely to the manner in which CACs exercise discretion. The regulatory program cannot be managed solely from the perspective of eliminating inequities. However, there should be an underlying statewide consistency that fosters a level playing field for all businesses.

1. DPR, in cooperation with the CACs, should promote consistency in enforcement actions. Written guidelines must attempt to ensure that the enforcement action is appropriate to the violation. The distinction between serious violations and the myriad of minor, paperwork transgressions should be clear. There should be specificity and more consistency in the

enforcement actions taken, and increased accountability by the CACs and DPR for enforcement actions. It may be necessary to set mandatory, minimum penalties for specific violations. Fines should be set at a substantial enough level to be a real deterrent. The appropriate use of Notices of Violation or Letters of Warning instead of monetary fines should be better defined to still assure compliance. Establishing mandatory levels for specific violations could ignore the circumstances of a given situation and this can affect fairness perceptions. A careful balance must be obtained that may require additional study and pilot projects in several counties.

2. Perform a detailed audit of a statistically valid sample of inspection records to determine if appropriate fines have been levied or other sanctions have been imposed for violators. This should be done during the mid-year or annual evaluation of CAC performance. Analyze whether fines or sanctions were increased for repeat offenders.

C. CEQA and Diversity – As discussed before, the pesticide regulatory program has been declared the functional equivalent of CEQA for the purpose of assessing environmental impacts prior to issuing a permit. Part of this equivalency, as it applies to the county restricted material permit, is dependent on site and time specificity being a part of the process. To maintain CEQA equivalency (which is critical to the ongoing viability of the regulatory program), CACs must have flexibility to restrict use permits to local conditions at the time of the application. This impacts county-to-county consistency. DPR is limited in suggesting the contents of a permit before its site and time specificity is compromised. As a result, there has been insufficient uniformity due to CACs who do not incorporate all the suggested conditions, and there has been inadequate flexibility for those CACs who do not deviate from the suggested conditions to account for local conditions, possibly to avoid criticism for not following the “minimum standard.”

1. DPR should develop a decision tree document leading to determinations of when suggested permit conditions should be statewide standards and when CACs can safely select from the conditions to match local conditions. This document should be developed as a product of the effort to adopt methyl bromide regulations governing field fumigations. When a determination is made that a condition has clear statewide applicability, DPR will promulgate a regulation instead of a suggested permit condition. This distinction should relegate suggested permit conditions to their appropriate role as part of the discretionary judgments of the CAC pertinent to the safe use of a permitted material on a specific site.

D. Encourage Excellence – Regulators usually think in terms of command and control. Not surprisingly, this has been the approach in prescribing DPR’s expectations for the enforcement program. While setting minimum performance standards, DPR must also find a way to encourage creativity and excellence.

1. Create an Enforcement Innovator Award and Grants Program. DPR should establish a program similar to the current IPM Innovator’s Awards, but for CACs. DPR would develop criteria for evaluating and rewarding innovation in enforcement program design or

management. The award would include public recognition and, ideally, a cash prize. DPR should request resources to dedicate a continuously appropriated amount of money each year that could be allocated to counties on a competitive basis to fund innovative improvements to individual enforcement programs. These funds would be separate from the mill assessment and could be used to fund single or multi-year projects. Counties could apply for funding for specific projects designed to address whatever is the focus of the negotiated workplans, but the grant program would provide money up front to initiate a project (rather than waiting up to a year to receive mill assessment reimbursement). This type of “grant process” could provide a relatively large amount of start up funds to get a good idea implemented on a fast track. Counties would compete for funds as they would for any other type of grant. An application, budget, and audits requirement could all be part of the program. Funds could be spent on almost anything for a project such as personnel or technology enhancements once criteria were established.

IX. Program Evaluation

The FAC requires DPR to reimburse CACs for some costs they incur in the administration and enforcement of pesticide laws. This reimbursement is currently based on the CAC’s activities, costs, workload, and performance, including the effectiveness of the pesticide use enforcement program in each county. The FAC further requires DPR and the CACs to jointly develop regulations to carry out these statutory provisions.

DPR conducts an annual evaluation of each CAC pesticide use enforcement program. DPR based the current evaluation elements on the funding criteria established by law. The results of the evaluation determine, in part, the level of funding a CAC will receive for pesticide use enforcement activities conducted in the previous fiscal year. Both internal and external stakeholders criticize the current program for the following weaknesses:

- 1) focusing on the quantity rather than the quality of work conducted;
- 2) inspecting paperwork rather than actual CAC activities;
- 3) “boiler plate” evaluation reports that provide a numeric score rather than a narrative explanation of the local program’s strengths and weaknesses;
- 4) promoting secrecy rather than openness;
- 5) lacking effective corrective measures for local programs that fail to improve in a timely manner; and
- 6) failing to address ineffective local pesticide enforcement programs.

In March 1998, DPR and the CACs began a program review aimed at fully integrating our funding mechanisms, the issues prioritization program, the CAC workplan negotiation and implementation, DPR’s compliance assessment program, and DPR’s Effectiveness Evaluation to provide a continuous improvement loop that the current program lacks. The team developed a new funding disbursement regulation that became effective July 1, 1999; a plan to better

integrate existing elements; and proposed improvements to these elements, including DPR's Effectiveness Evaluation regulations that are expected to be implemented on July 1, 2000.

Neither internal nor external stakeholders needs are met when DPR allows ineffective local programs to continue indefinitely and when DPR fails to openly and fully communicate program strengths and weaknesses. DPR may not have adequate staff resources to fully address internal and external stakeholders concerns regarding program evaluation.

Program Needs and Recommended Actions:

A. Objective Review Criteria – Currently, county reimbursements are based on numerical performance measures. The program needs, and the CACs want, performance measures, or outcomes, that demonstrate a county program is moving toward the achievement of meaningful goals, such as reducing worker illnesses, improving compliance with pesticide laws, and reducing incidents of environmental contamination. Objective criteria ensure that disbursement of local subventions is equitable and based on common goals. Unfortunately, no consensus or formula has been proposed.

1. DPR should thoughtfully assess the forthcoming recommendations of the Mill Assessment Disbursement Team regarding evaluation criteria. If no definitive criteria emerge, a cooperative study with the CACs and external stakeholders should be undertaken. The identification of accurate performance measures, or outcomes, will be the product of continuous implementation and refinement.

B. Transparency and Accountability – Evaluation of the effectiveness of the pesticide enforcement program must be conducted in a transparent and accountable fashion.

1. As mentioned earlier, DPR should consider creating an ombudsman position within the Department to provide external input concerning the effectiveness of the CACs' complaint response and suggestions for improvements. This position could also investigate complaints concerning the CACs' or DPR's programs. DPR would require additional funds to set up and maintain this new departmental position and should study appropriate means of funding. In addition, DPR may want to survey complainants to determine satisfaction with CACs' response. DPR could contact a random sample of people who have filed complaints to a CAC office to determine if they are satisfied with the CAC response.
2. CAC evaluations should be provided to each Board of Supervisors (Board), if so requested, and made readily available to the public. For fairness, the released evaluations should always provide the context for the evaluation not just a statistical or numeric ranking. It would also be important that areas of excellence be equally noted with any deficiencies.

3. Consider the value of requiring the CAC annual Report 5 to DPR to include more narrative information rather than statistical widget counts. This would be appropriate once objective review criteria are identified and adopted.

C. Enhance Compliance Assessment Efforts – The PEB conducts training, oversight, and evaluation of the county regulatory program. These program support functions have not focused on issues of compliance evaluation, an important program indicator.

During FY 1986-87, a budget change proposal was approved to conduct compliance assessments. Subsequent to the \$2.0 million DPR General Fund reduction in FY 1993-94, approximately half of the funding for the positions was eliminated and the remaining resources were directed to program evaluation and training of county staff. In FY 1997-98, the Branch redirected RO staff from other core program functions to conduct a minimal level of 8 compliance assessments during an 18-month period. The compliance assessments conducted during that time period were highly successful and well received by the CACs.

The compliance assessments are conducted in a county or region, usually with a two-person team. The compliance team targets heavy pesticide use seasons in the selected area. The assessment is conducted in a two to three week period, during hours when applications are commonly made. This usually involves early morning, evenings, and weekends as pesticide applications are made during these hours to avoid wind, traffic, and farmworkers. Team members work extended hours because of the timing issue.

Compliance assessments measure pesticide user compliance statewide and provide feedback on trends and enforcement program components. PEB staff conduct compliance assessments by observing specific aspects of pesticide use in field situations and documenting the degree of pesticide user compliance with requirements. DPR and the CACs use this information to identify program strengths and weaknesses, plan focused inspections, design outreach programs, make programmatic and policy changes, and modify annual workplans.

Due to the constraints of DPR's current resources, existing assessment activities are limited. These limitations impact the number of counties that can be evaluated each year, which causes gaps in the current data being collected. Assessments are scheduled according to the level of pesticide use within the county. Counties with the most pesticide use are prioritized and receive assessments more frequently. Since counties are evaluated on a rotating schedule, some counties may wait several years before receiving a comprehensive compliance assessment. Consequently, statewide data may not be accurately assessed.

DPR uses currently available compliance assessment data to evaluate the effectiveness of laws, regulations, and label requirements. CACs also use the data to identify statewide trends, target enforcement activities, and evaluate county pesticide use enforcement priorities. Under the proposed program, this information will be critical to the reevaluation of program objectives, priorities, and resources. The DPR and CAC team is also considering methods for incorporating this information into the Effectiveness Evaluations.

With current staff levels, DPR can complete comprehensive compliance assessments in 6 to 7 counties annually. DPR will need to increase the number of annual county surveys in order to generate valid data for trend analysis, issue prioritization, and program evaluation. This will only be accomplished by increasing staffing levels in both DPR headquarters and Ros.

1. DPR should request an augmentation of staffing for PEB and ROs to sufficiently increase the number of annual compliance assessments to produce valid data for trend analysis, issue prioritization, and program evaluation.

D. Enhance Effectiveness Evaluations – PEB staff conduct annual and mid-year effectiveness evaluations for every county as part of the program reimbursement process. Fifty-five CACs regulate California's 58 counties. Currently, four RO staff spend from several days up to two weeks conducting 110 county effectiveness evaluations in the 55 jurisdictions. The time allotted per review is dependent on the size of the county and its pesticide regulatory program. Due to other core program commitments, these evaluations lack both depth and quality.

The existing program randomly evaluates 2 to 10 percent of a county's effectiveness indicators, provides evaluations for each county program, describes successful program aspects, and follows up with CACs on needed improvements. The evaluations consider financial reports, adherence to enforcement guidelines, enforcement action appropriateness, investigation quality and timeliness, restricted material permit accuracy, business registration and license records, and inspection quality.

County evaluations are part of DPR's oversight and support function. Evaluations are used not only to determine reimbursement to counties for program costs, but also to identify and document areas of program deficiencies and strengths. These program areas are discussed with each CAC. Redirection or focusing of resources is the desired result if program deficiencies are found. RO liaisons work with CACs to implement these program changes. Strengthening and improving the quality of county program evaluations provides liaison staff, CACs, and DPR with the data to make choices in program goals and priorities.

1. To coordinate, conduct, and document the annual effectiveness evaluations at a more appropriate level of scrutiny and detail, DPR will need to increase staffing levels in both the PEB and ROs. DPR should request resources to augment State and regional staffing appropriately.

E. Establish a Continuous Program Evaluation Component – DPR has historically redirected existing staff from core programs to offset changes in priorities and to staff for emergency projects and issues. The resources necessary to analyze core programs and the effectiveness of permit conditions and mitigation measures in a comprehensive manner in order to design and plan effective strategies to ensure success are not available. DPR must adequately identify performance measures and modify program activities to respond to emerging State and

federal pesticide mandates. Although DPR has tremendous data assets, it lacks the ability to effectively apply evaluation results to improve the pesticide enforcement program.

DPR generates excellent data and reports, but these reports are analyzed independently, if at all, and never reviewed in total to determine statewide trends or identify goals. DPR should establish a program to evaluate, analyze, and recommend strategies based on continual review of existing and proposed data and reports. The advantage to this approach is to identify emerging trends in pesticide use early enough so that informed decisions can be made to address the issues successfully. Continuous review will identify programmatic successes and deficiencies and allow appropriate redirection of State and local resources.

1. DPR proposes to establish a new program to provide continuous program evaluation and improvement in the State and county pesticide use enforcement programs through ongoing research and analyses of goals, priorities, and performance indicators. The proposed program emphasizes open, ongoing communication before, during and after each program cycle based on measurable, verifiable information, which also promotes accountability and assures uniform enforcement of State and federal pesticide laws. To establish and implement this level of program review, DPR needs to add staff who are skilled in database development, management, and analysis. The new program component would add the analytical capability necessary to review and analyze these data and make program recommendations based on the analysis.

F. Enhance Measures for Ensuring Effective County Programs – When faced with an ineffective local program, DPR can take several actions including:

- (a) more active oversight of the local program;
- (b) discussions with the County Board of Supervisors;
- (c) discussions with the County Agricultural Commissioners & Sealers Association’s Ethics Committee;
- (d) reducing a CAC’s funding, or
- (e) working with CDFA to take action against the CAC’s license.

The CACs enforce statewide pesticide laws and regulations. The county board of supervisors of each county appoints their own county’s CAC. CDFA licenses the CACs and their staffs. The licensing process includes establishing qualifications and regulating the CAC system. When a CAC fails to enforce pesticide laws, DPR has no authority to remove a CAC since DPR does not have appointive powers or licensing controls. For adequate control over the pesticide use enforcement program, DPR needs a stronger role in the licensing relationship with the CACs.

FAC Sections 2181-2187 describe a disciplinary trial board process that may result in the decertification and removal of a CAC. These trial boards are convened by the Secretary of CDFA, and may include the Director of DPR, as appropriate.

1. Legislation needs to be enacted to provide DPR with the authority to convene and lead a trial board to decide on potential decertifications and removals of CACs for cause. This legislation should also specify that DPR is responsible for licensing the CACs for pesticide regulatory activities.
2. DPR should assist CACs in communicating program priorities and needs to their Boards. DPR should be receptive to the priorities and concerns of the Boards and consider them during the program evaluation process when appropriate. DPR should dedicate staff resources to work with CACs and their Board to build stronger relationships and a support network for disciplinary action.

ENFORCEMENT PROGRAM CHALLENGES: Pesticide Use Issues

Before addressing specific issues of pesticide use, a review of the limitations placed on the scope of this document is necessary. DPR received many comments from external stakeholders concerning the establishment, or continuation, of policies governing pesticide use, which is not the focus of this review. Contributors seemed to implicitly understand that we were not looking at mitigation measures controlling the use of specific pesticides, for example methyl bromide. Yet they seemed to miss the application of that principle regarding promoting mitigation measures that are not chemical-specific. For example, there was considerable comment on the need to adopt a reduced-use goal and to train the CACs in promoting least-toxic alternative pest control measures. While both of these topics may merit discussion in a larger context, they are not enforcement issues unless they become an enforceable part of the program.

Likewise, some stakeholders lauded the risk-benefit criteria that inform DPR's decisions on pesticide use, strongly urging that aspect of the program to be retained after this review. Again, how risk mitigation decisions are made is not the subject of this review. Instead, this is an examination of DPR's ability to resolutely and equitably enforce whatever determinations are made. Ironically, in this particular case, the perception that California's pesticide regulatory program is based on statutorily required risk-benefit assessments is a false one. It is true that major parts of the federal program under FIFRA are based on risk-benefit provisions, and there are some specific elements in State law that contain elements of risk-benefit evaluations. California's program is not predicated on weighing the benefits of pesticide use as a condition of mitigating risk, rather, DPR is charged with protecting public health and the environment from adverse effects associated with pesticide usage. The focus now is to look at some practical issues of program implementation.

X. Labels, Regulations, and Permits – Mitigating Risks of Pesticide Use

DPR and the CACs enforce pesticide use restrictions that are primarily established in three ways: the product label, regulations, and a restricted materials permit. Federal preemption prohibits states from requiring their own labels on pesticide products. While there are California-only pesticide labels on some products, it is always a reflection of the eagerness of the registrant to register their products in California, limiting the viability of this mitigation option.

Regulations are administratively enacted laws. The Administrative Procedures Act prescribes the process for promulgating regulations which demands extensive supporting documentation, public review, and oversight by the Office of Administrative Law. A regulation typically takes six months to a year to complete, and is an effective regulatory tool.

The restricted material permit program was designed to accommodate widely divergent local needs. California restricted materials can only be purchased and used subsequent to obtaining a permit from the local CAC. The permit establishes special site-specific conditions on the use of the pesticide above and beyond the label and applicable regulations.

Program Needs and Recommended Actions:

A. Improve Clarity of Control Measures – Laws and regulations contain ambiguous language that interferes with the CACs’ ability to take appropriate enforcement action. A thorough review of the laws and regulations that pertain to the local pesticide use enforcement program is needed. When regulatory terms and requirements are unclear, the regulated community is confused and regulators often hesitate to enforce. Requirements and regulatory intentions should be clarified by removing ambiguous terms and mandates. The initial effort should focus on the restricted material permit program, pesticide drift requirements, notice and field posting, and pest control operations.

The Restricted Material Permit Program requires the permit applicant to identify areas that could be adversely impacted by the use of the proposed pesticides. 3CCR section 6428 provides a list of examples of sensitive areas, but does not require these areas to be treated differently than other areas. The regulations require the CAC to evaluate the proposed application based on the information provided by the applicant, but do not explicitly define “substantial adverse environmental effect” especially as it relates to sensitive sites. Current DPR policy also does not fully address these issues.

1. Revise policies to clarify how to better identify sensitive sites for the purpose of applying for, and issuing, a county restricted material permit.

Pursuant to 3CCR section 6000, “time specific” means a permit or notice of intent that specifies the date the application is expected to commence. The definition also allows the application to commence within four days following the proposed date if the application is delayed due to factors beyond the permittee’s control. Since the CAC has very little control over, or knowledge of, when the application actually occurs, it is difficult to evaluate the proposed application or conduct inspections. Also, it is difficult to coordinate worker activities in adjacent fields or provide notice to neighbors when requested.

2. Study various ways to make the restricted material permit or Notice of Intent more precise as to the time of application without jeopardizing the functional equivalency of the program under CEQA, especially for the coordination of worker activities and notification of neighbors.

Pesticide drift laws and regulations contain terms that make it somewhat difficult for the CAC to prove that a violation occurred and to take enforcement action for violations. A CAC must first prove that the drift was “substantial” and then whether the applicator exercised due care throughout the application. Some stakeholders believe CACs utilize these ambiguities to avoid taking enforcement actions even when the drift episode clearly occurred.

3. Clarify terms in the pesticide drift laws to improve the enforceability of the program.

B. Provide CACs with Adequate Training in Permit Conditioning – The regulations require the CAC to determine if a substantial adverse environmental impact will result from the proposed use of a restricted material. If the CAC determines that this is likely, the permit must be conditioned to require the use of feasible mitigation measures or feasible alternatives, or the permit must be denied. Neither DPR nor the CACs provide training in the identification of mitigation measures or alternatives. CAC staff may be pressured by permit applicants, pest control advisors, and pest control operators to issue permits as requested, regardless of the environmental consequences and have been threatened with lawsuits if the crop fails as a result of the conditions imposed.

Recognize that the concept that farmers use restrictive materials without consideration of alternatives is not realistic. PCAs adapt their recommendations to fit the system. Neither the PCA nor the grower has time to waste in having a permit denied, so PCAs generally make recommendations that the CAC will likely accept. For example, several years ago Glenn County denied a couple of permit requests for a particular restricted material that, in the opinion of the CAC, could have posed an environmental concern given local conditions. Once word of those denials circulated throughout the PCA community, over 150 similar pest control situations were addressed through revised recommendations not requiring a permit. This example illustrates both that the current system can work as envisioned and that the review of raw data (i.e., the number of permit denials in a county) can be very misleading as to the impact of CAC decisions.

1. DPR should develop curriculum and provide training to CACs in understanding their obligations under the CEQA-certified, functionally equivalent program, so that feasible mitigation measures and feasible alternatives are properly considered. DPR needs to review current regulatory requirements and CAC implementation of this program to assure that health and environmental problems are prevented.

C. Minimize Incidents of Drift and Other Misuses – Minimizing the off-target movement of pesticide residues is a primary purpose of the enforcement program. Mitigation measures incorporated into product labels, regulations, or restricted material permits must be vigorously enforced in order to protect human health and the environment.

1. Require documentation of all drift or misuse allegations to allow trend analysis or monitoring to occur (relates especially to permit mitigation measures); monitor, analyze, and publish trends in inquiries and complaints; and institute mandatory site visits in areas with repeated inquiries and/or complaints. CACs should document all drift inquiries, regardless of whether or not an “official complaint” is being filed. DPR and the CACs should refine, and make publicly available, standard protocols for responding to drift complaints – including urban drift. They should determine, to the extent feasible, protocols for notifying school administrators, superintendents, and parents when a drift incident occurs near a school or near an area where students are on their way to and from school, and delineate clear responsibility for notification. This may be difficult because school districts operate under their own authority and accountability. For example, one CAC recently suggested that it might be feasible to contact growers along bus routes in rural

areas to make them more vigilant for school bus operation when performing spray operations. The CAC was surprised to learn from school district personnel that bus routes in that county are considered confidential information.

2. Increase budget for CAC sampling as part of investigations. Prior budget problems reduced the number of samples allowed for investigations. DPR should work with the CACs to increase the budget for local sampling to determine if drift has occurred.
3. Require frequent mandatory site visits of applications near sensitive sites. Sensitive sites should include schools, school bus routes, dwellings, organic fields, and farmworker living areas. A sensitive site would also include an area with repeated inquiries and/or complaints. Knowing the location of all organic parcels may require integration with the organic registration process of CDFA. If a grower has a site that is not treated with any restricted pesticide, it may not be in the system. In general, the current technology probably allows for a township-range-section reference to known organic sites. Better communication of these sites is necessary, especially for counties with active weed control programs. We should consider soliciting organic growers to voluntarily register their field sites.
4. When responding to drift violations, the CAC should consider changing use restrictions in order to prevent re-occurrence. Monetary penalties may be less effective in these situations.
5. There is no statutory allowance for a CAC to refuse or revoke an operator identification number for violations or negligence. Interestingly, most of the pesticide drifts are typically non-restricted materials, such as sulfur. In the case of an operator who only uses unrestricted materials and has a history of drifts, no permit action of any kind can be taken although fines could be levied. DPR should consider legislation or adoption of a regulation to provide such authority.

XI. Worker Protection Issues

DPR staff conducts field studies and evaluates illness investigations to assess the protections afforded by labels, identify trends, and improve hazard communications. In addition, staff develops training requirements and materials, safety publications, mitigation measures, and engineering controls. Pesticide workplace safety has been a primary focus of the pesticide regulatory program from its inception. The customer most in need of protection and advocacy is the farmworker. However, the pesticide workplace extends from the agricultural fields to hospitals and restaurants to the pet shop and home garden. California sets the standard for the nation in worker protection and must aggressively continue to do so.

Program Needs and Recommended Actions:

A. Improve Worker Outreach and Education Efforts – The credibility of DPR's worker safety program rests on mitigating adverse effects in the workplace with engineering controls, protective clothing and/or equipment, and field re-entry intervals. Therefore, employers and workers must understand and comply with the requirements for program effectiveness. Farmworker advocates claim that what DPR makes work on paper, doesn't really work in the field. Hazards aren't actually mitigated. For DPR to continue its efforts to maintain pesticide uses based on such control methods, it must take on a stronger role to communicate and strictly enforce these measures.

1. A "workplace evaluation response unit" should be established to follow up on complaints and illnesses/injuries that occur despite adherence to existing laws. This effort should be staffed by occupational safety specialists, not just enforcers. DPR should request additional resources to support such a unit.
2. Enforcement actions should be taken against workers who are properly trained in the use of, and provided with, appropriate protective clothing, but refuse to wear it.
3. Field posting and oral notification requirements can vary depending on the toxicity of the concentrated active ingredients and length of the restricted entry intervals. State regulations are more stringent than some pesticide labeling. The success of this system depends on communication between property operators and applicators. Based on the number of field worker illnesses, stakeholders feel that these requirements are too complicated to assure field worker protection. DPR should consider requiring posting of pesticide applications at the perimeter of all fields under restricted entry intervals in addition to oral warnings. Such signs should also be prominently marked with expiration dates. Since warning signs are often discounted and lose their intended effect, more signs will not necessarily equate with more safety. However, there may be specific crops, regions, or circumstances that may benefit from such a requirement.
4. State and county recruiting, hiring, and salary structure may need to be improved to attract bilingual inspectors. DPR and the CACs should do bilingual pesticide education outreach to farmworkers through the community and local media, including Spanish radio.
5. DPR and the CACs should coordinate farmworker training through local organizations (e.g., Americorps, community clinics, and unions) on pesticide effects, proper handling, procedures if significantly exposed, and how to file a complaints.
6. Require posting of the hazard communication leaflets (Pesticide Safety Information Sheets) at the workplace. Farmworker advocates state that workers either do not know where the records are displayed or are afraid to ask because of possible retaliation. Displaying the hazard communication program materials at the workplace (on the portable toilets, at the decontamination site, etc.) will make that information directly available to the workers.

This will cause some extra work for employers, as there may be more than one worksite and the worksites for field workers frequently change, but should be seen as having long-term benefits to employee health, safety, and retention.

B. Improve Illness Reporting - DPR's Worker Health and Safety (WH&S) Branch maintains a pesticide illness surveillance database and has collected data through workers' compensation records since the mid-1970s. Sources of case identification for the database also include pesticide illness reports (reports by county health officers) and reports from poison control centers. CACs investigate the circumstances surrounding each incident and report those findings to WH&S for evaluation and entry into the database. The California pesticide illness surveillance program provides a vital feedback function in the pesticide regulatory arena by identifying pesticide safety problems, hazardous application methods, and problem pesticides. This surveillance program has set the standard for the nation.

In the early 1990's, section 138.6 was added to the Labor Code requiring the Department of Industrial Relations (DIR) to develop an electronic database appropriate for managing and evaluating the Workers' Compensation Program, and to provide statistical data for research into specific aspects of the program. SB 1141 (Chapter 674, Statutes of 1997) added section 138.7 to the Labor Code prohibiting release of Workers' Compensation data that include individual identifiers (individually identifiable information). Individually identifiable information is defined as "any data concerning an injury or claim that is linked to a uniquely identifiable employee, employer, claims administrator, or any other person or entity." Section 138.7 also states that "a person or public or private entity not a party to a claim for Workers' Compensation benefits may not obtain individually identifiable information obtained or maintained by DIR on that claim." In addition, the statute requires DIR to adopt regulations for access to individually identifiable information by "other persons or public or private entities for the purposes of bona fide statistical research." WH&S staff has reviewed a copy of the draft regulations, which basically restate the law. DPR will not likely be guaranteed access once electronic reporting is initiated.

WH&S relies on Workers' Compensation records for 70 percent of the pesticide illness and injury cases entered into the pesticide illness surveillance database. Without that source of data, the surveillance system will be extremely limited in its value. The CAC efforts will also be compromised.

1. A legislative change is necessary to include an exemption for DPR and the CACs in section 138.7, similar to the exemption already received by the Department of Health Services. The proposed legislation would ensure that DPR has continued access to the Workers' Compensation records essential to the pesticide illness surveillance program.

In California, physicians are required by Section 105200 of the Health and Safety Code to report any medical condition they suspect to be related to pesticides. However, less than 30 percent of the cases on record are the result of direct physician reporting. In late 1994, WH&S undertook a two-year project to evaluate the effectiveness of the pesticide illness reporting system. The

project specifically targeted physician reporting requirements to find where improvements could be made. The project had three segments: 1) a letter from the Department of Industrial Relations to all California physicians, reminding them of their legal responsibility to report pesticide illnesses; 2) targeted education and training outreach in three counties by OEHHA; and 3) reminders from DPR to individual physicians who failed to report suspected pesticide-related illnesses. When an attending physician did not submit an illness report to the local health authority, DPR sent a reminder letter to the physician. If, after receiving a follow-up letter for failing to submit a report a second time, the physician continued to disregard reporting requirements, the issue was forwarded to the Department of Industrial Relations (DIR) for possible enforcement action.

As most illness reports come through the workers compensation system, illnesses related to pesticide exposures outside of work are probably under-reported. Nonetheless, because of the wide variety of reports -- many in the nonagricultural workplace where pesticidal products are similar to those used by consumers -- it is considered unlikely that major hazards escape detection.

2. DPR should consider legislation to strengthen the physician reporting law, possibly giving enforcement authority to DPR or the Department of Health Services (DHS). While putting that requirement under DPR's authority would give DPR direct control over enforcement of the reporting requirement, physicians may not understand DPR's authority. DHS may be a better compromise, as physicians know them.
3. Through a regulation change or legislation, DPR could require employers to report when a physician, nurse practitioner (under the supervision of a physician), or company doctor treats an employee. Requiring employers to report would improve the collection of cases related to pesticide exposure. In addition, that report may save investigative time for the CAC. However, this change would add to the paperwork required of the employer without any guarantee that it will result in an increased case selection. This concept should be studied further.
4. Request resources to fund the poison control centers (PCCs) to report cases for physicians with whom they consult. The PCCs frequently discuss pesticide-related cases with physicians. The PCCs could report for the physician, thus increasing the case selection and decreasing the time between the incident occurrence and investigation. The PCCs will need funding for a project of this sort. DPR oversight would be needed to ensure PCC staff was reporting for the physician.

Recent contracts with the Fresno Poison Control Center and, then, with all four PCCs has produced somewhat disappointing results so far. When a doctor calls with a pesticide illness treatment or other question, the PCC offers to fill out the pesticide illness report and send to the appropriate agencies. This can save a lot of time in getting reports delivered. DPR is currently evaluating the possibility of this mechanism of illness reporting. New computer applications may enhance the effectiveness of this program. Various other problems exist currently with PCC

requiring further study before funding is requested. Part of the study should explore other contact and reporting points such as rural clinics, hospitals, HMO's, and Medi-Cal.

Farmworker advocates inform DPR that many workers who experience illness or injury do not seek medical care or inform anyone that they are ill for fear of retaliation (losing their jobs, being demoted, etc). This apparently occurs despite Labor Code regulations that prohibit retaliation following a complaint about working conditions. Workers have the right to file a complaint and employers are required to take them for medical care if they suspect the worker is suffering from a pesticide-related condition.

5. Change the regulations to strengthen the prohibition of retaliation in Title 3. Employers need a reference for the regulation, which is very broad in Title 3. By amending the prohibition in Title 3, employers can be made fully aware of the prohibition against retaliation.
6. As previously proposed in a slightly different variation, DPR should consider establishing a hotline for confidentially reporting illnesses (800 number). This will require new resources to start and maintain the service. Initially, there will be a need to advertise the 800 number. Workers need an easy and safe mechanisms to file complaints about unsafe work practices. These mechanisms need to be advertised in an appropriate media to ensure workers are aware. DPR should also require the hotline number to be prominently posted at the workplace. A large volume of complaints could tax the limited resources of the CAC, especially since an investigation should begin within three days of receipt of the complaint.

C. Improve Incident Investigations - Recognizing that the strength of the surveillance program rests on the adequacy of illness and injury investigations, the WH&S and PEB conduct training sessions for CAC staff on investigative techniques. The two branches also provide a manual on illness investigations for State and county staff. WH&S physicians and other staff are also available to consult with health care providers and local health authorities, often in conjunction with active illness investigations. In addition, DPR staff educate the medical community about concerns relating to pesticides.

Enforcement staff evaluates completed investigative reports for regulatory purposes, and WH&S staff members use the reports to determine if the illnesses are related to pesticide exposure. Case summaries are compiled in a computerized database from which annual reports are produced. WH&S have prepared annual reports of suspected pesticide illness since 1973.

In 1994, the DPR approved a policy that established a different standard of investigation for incidents involving antimicrobials. Essentially, if an antimicrobial is implicated in an illness or injury and no work time was lost, the CAC collects only the most basic information, usually by telephone, and sends the business an informational leaflet and concludes its investigation. A lost-time illness/injury results in a telephone interview of the employer and employee and possibly some counseling about pesticide laws and regulations. Only an incident that meets priority criteria results in an onsite inspection. For most other pesticide-related incidents, the

CAC conducts an on-site investigation regardless of time lost; they evaluate application equipment and records. If violations of laws or regulations are noted, counseling, a notice of violation, or a fine may occur.

CAC staff activities are under the guidance of PEB. County staff are thoroughly trained in conducting an investigation to determine if laws or regulations have been violated. They have received training in writing reports, in the manner of police reports, that specify the biologist activities in the investigation and the findings related to violations of laws and regulations. Frequently, the activities and actions that led to human exposure are not included in the investigative report. WH&S has conducted training with respect to determining the cause of exposure, but more training and field assistance is necessary to improve the quality of the investigative reports.

Many of the employees who work with pesticides speak a language other than English. Many counties do not have bilingual staff for illness investigations. Miscommunication during an investigation may lead to a misunderstanding of the facts.

1. When investigating a pesticide incident, CACs should interview other involved employees of the suspected grower whether or not they complained. CAC inspectors should also interview all employees out of sight and earshot of supervisors or employers, both to encourage honest reporting on incidents and to prevent retaliation against workers.
2. If training seems to be an issue, change the investigative process policy to include an evaluation of the quality of the training received. Investigators can take some sort of action for lack of training records; but the quality of the training program and the training received is rarely evaluated during an investigation. Investigators need to evaluate the whole training process, not just recordkeeping. Evaluating the written training program, the delivery of the training, and comprehension by the employee ensures employees are receiving the necessary training. Adequate evaluation of the whole training program may require additional resources.
3. Request resources to provide training to the industries that use antimicrobials. Often these industries are unaware that antimicrobials are pesticides and that pesticide laws and regulations govern their use. Training will assist the regulated industries in understanding the pesticide regulatory requirements and allow employers to make the proper safety decisions. All pesticide-related illnesses or injuries should be investigated with vigor. These investigations allow WH&S to determine if mitigation measures are needed. It has not been substantiated that this duplicates the efforts of DIR in these workplaces. In addition, some employers were confused by the safety requirements of DIR and DPR. Short of rescinding the current policy to handle these workplace issues differently, DPR should consider revising the exception to find a compromise that will bring some equality to the investigative standards.

4. Request additional resources to augment WH&S staff in order to provide more training and field assistance in support of pesticide illness investigations. WH&S staff are well-versed in the information needed for an accurate case evaluation. Staff could provide assistance to the CAC on incident investigation. Too much of the recent PEB-developed training has emphasized writing a police-style case report which may be suitable for enforcement actions, but is too often inadequate for identifying occupational safety issues. Investigations need to stress more information collection to determine the cause of the exposure incident. As part of the information gathering, violations of laws and regulations should become known, but not be the sole focus of the investigation. CAC staff will be asked to refocus the investigative process, which may require additional training. We need to collect appropriate information to make an accurate evaluation of the case. With no changes in the way investigations are conducted, we will continue making guesses about what happened to cause illness or injury.
5. CAC staff conducting illness investigations should be able to effectively converse with workers in the county. Bilingual staff can effectively communicate with employees and employers who do not speak English. Miscommunication during an investigation may lead to a misunderstanding of the facts. Finding qualified staff who are also bilingual may be problematic and could result in staffing shortages. DPR should assess the costs involved in making translators available to CAC staff who conduct investigations. By contracting with translating services, translators could be available to effectively communicate with non-English speaking employees and employers, and CACs would not be required to hire bilingual staff. However, contracting with bilingual services may result in delays in the investigative process. Effective communication during an investigation is a must to obtain accurate information. Providing someone who speaks the language of the employee may make it easier (less fear of retaliation) for the employee to discuss hazards in the workplace.

D. Improve Use of Acquired Data - DPR uses the information gathered in the illness investigations to determine if changes need to be made in worker protection, label directions, or work practices to avoid overexposure to pesticides. New regulatory initiatives may spring from analysis of the cumulative database or in direct response to illness episodes.

For several years, DPR has explored a variety of ways to improve and capitalize on the information collected through illness investigations. The database has been expanded to include the age and sex of the victim and the Standard Industrial Classification code of the victim's employer. Collection of information on age, sex, and job classification will allow the development of better demographic information to help predict categories of persons at highest risk.

1. Increase awareness of the Pesticide Illness Surveillance Program (PISP) by increasing the visibility of the data, especially with the medical community. Greater visibility may increase physician awareness and compliance.

2. Dedicate additional staff resources to analyze PISP data and use identified trends to improve worker protection.
3. Evaluate structural pest control by pest control operators, building managers, and maintenance staff for illness trends.
4. Evaluate backpack sprayers and other high-risk methods of application to determine if they protect the health of the operator.



APPENDICES

Appendix A: Agency Assignment

Appendix B: Team Charter

Appendix C: Project Process/Timeline

Appendix D: Brief Description of Existing Enforcement Program

Agency Assignment

TO: Directors, Executive Officers, Board Chairs

FROM: Winston H. Hickox
Secretary for Environmental Protection

DATE: May 24, 1999

SUBJECT: ENFORCEMENT INITIATIVE

As you know, I believe that California's existing environmental laws must be vigorously, consistently, and uniformly enforced. I am deeply committed to fulfilling this responsibility and carrying out the Governor's environmental policies, which includes implementing our stringent environmental standards resolutely, but equitably. Since enforcement is one of my primary goals, I am asking each one of you to perform program evaluations of your enforcement programs and report back to me by September 1, 1999, on how to improve our enforcement programs.

The report should include brief descriptions of each enforcement program, current challenges and shortfalls, and proposed solutions. Solutions should be categorized as policy, regulatory, statutory, or budget changes. Emphasis should be given to accomplishing these changes by use of existing resources but may include needed budget increases. This is intended to be a top to bottom review, and should be as inclusive as possible in terms of input from all of your staff. The suggested method is to put together an enforcement initiative team with representatives of divisions, and other subdivisions. I have attached an example of a similar exercise done by the Air Resources Board.

Our goal is to have a road map from which we can plan for the near and long-term changes needed in this vital area. The report should include: 1) enforcement program needs; 2) multi-media issues and challenges; 3) computer system needs, i.e., track repeat and multi-media violators; and 4) resource needs. In the interim, I would ask you to re-examine your staffing priorities to determine if any transfer of staff (within existing resources) to enforcement related activities is needed.

The review should include input from local entities (i.e., Regional Boards, air districts, local enforcement agencies) if there are state policy/regulatory/statutory/budget issues that affect their abilities to carry out state delegated programs.

I have asked Lisa Brown, Acting Deputy Secretary for Law Enforcement and Counsel, to help coordinate the enforcement program evaluations, and recommend that you contact her if you have any questions.

PROJECT OVERVIEW: Team Charter

[**NOTE:** Several comments were received on this original team charter. Many of those comments would actually have improved this document's readability and content. However, we decided to preserve the document without edit for its historical significance as our starting point for the project.]

Mission: To ensure that pesticides are used in California in a manner that does not impair human health or damage the environment, by improving compliance rates with federal, state and local pesticide control laws.

Background: The Department of Pesticide Regulation (DPR) has oversight responsibility for pesticide programs in California, with the principal responsibility for compliance and enforcement activities residing with the County Agricultural Commissioners (CACs). California pesticide statutes also give CACs authority to issue use permits for restricted pesticides. Both CACs and DPR use a number of tools to assure compliance with pesticide laws and regulations – including outreach, education, use restrictions, registration/label modifications, administrative penalties, litigation, and so on.

Compliance assistance has been a focus of Cal/EPA entities during the past few years, but such assistance has its limitations. The success of any environmental regulatory program is directly related to the perception of regulated entities that the law will be enforced. Every law has its violators, due to willfulness, ignorance or incompetence. In order to provide a fair and consistent business environment for all regulated entities, vigorous enforcement of the law against such violators is necessary.

Because of the broad authority given to CACs by state pesticide statutes, the varying staffing levels devoted to pesticide programs among CAC offices, and differing local conditions, local enforcement programs for pesticide statutes differ from county to county. With the initiation of a new administration in California, and its emphasis on resolute and equitable enforcement of laws and regulations, the structure and conduct of compliance and enforcement activities in the state's pesticide programs needs a thorough review. The goal of this review will be to identify challenges and shortfalls in these programs, and to identify proposed solutions.

In addition to recommendations for statutory, regulatory or policy changes to improve pesticide program enforcement activities, accountability and output measures need to be evaluated and improved, if necessary. These measures need to be assessed in terms of how well they measure our success in achieving our goal of ensuring that pesticides are used in California in a manner that does not impair human health or damage the environment. They also need to be assessed in terms of how well they allow us to monitor the efficiency and effectiveness of our operations.

Products: The product of this effort is to be a report that includes the following topics:

- 1) Description of the current program

- 2) Current challenges
- 3) Enforcement program needs
- 4) Multi-media issues and challenges
- 5) Computer system needs
- 6) Resource needs

Schedule: The deadline for completing this report is September 1, 1999. This schedule will allow any recommendations to be included in planning for the 2000 Legislative Session and the 2001-02 budget.

Participants: DPR will organize a workgroup to accomplish this effort, which will include representatives from the Department and from CAC offices. As part of this effort, input shall be solicited from constituents such as commodity/trade groups, environmental organizations and other interested parties.

PROJECT OVERVIEW: Project Process/Timeline

DPR charged a team comprised of State, regional, and county representatives with the primary responsibility for establishing the process and priorities for evaluating enforcement. The team first met on July 7, 1999, in the Director's office with CACs participating by conference call. At this initial session, major issues were identified in roundtable discussions and a tentative project timeline was adopted. A second meeting was held in similar fashion on July 20, 1999. At this session, the general contents and organization of the final report were discussed, and a plan was developed for external stakeholder outreach. The relatively short period of time originally allotted for this project made efforts to obtain extensive input difficult. From the earliest stages of planning the project, DPR determined that a concerted effort would be made to reach out to external stakeholder groups. As a result, three phases of outreach were developed and utilized.

PHASE ONE

DPR invited several external stakeholders to participate in one of two conference calls to share their respective views on the pesticide enforcement program. Representatives from the community of pesticide registrants and agricultural user groups participated in a conference call for approximately 90 minutes on Friday, July 23, 1999. On that same day, a conference call was convened with members of various environmental and public interest groups. In both cases, participants requested that they be allowed to follow up their oral input with written comments to be provided within the next two weeks.

PHASE TWO

The Pest Management Advisory Committee was called into a special session on August 24, 1999 to review a draft issues paper based on the work of the Enforcement Initiative Work Group and the input from external stakeholders. This public meeting resulted in additional input on previously identified issues and some additional issues. A discussion of prioritization of issues also occurred.

PHASE THREE

From the outset, it was clear that this topic would merit more than the artificially limited period of evaluation. DPR determined to include in this report recommendations for long-term development and further study. In this way, this initiative will become part of DPR's continuous improvement efforts. This project will be carried forward as part of an ongoing cycle of planning and quality improvement with additional opportunities for public outreach and input.

DPR IS COMMITTED TO THE CONTINUOUS IMPROVEMENT OF OUR ENFORCEMENT PROGRAMS.

PESTICIDE REGULATORY PROGRAM ENFORCEMENT

DPR regulates pesticides under a unique and comprehensive program. DPR licenses pest control businesses and commercial pest control operators, pest control aircraft pilots, agricultural pest control advisors, and pesticide dealers and brokers. DPR also certifies persons who use restricted pesticides; supervises pesticide product quality control, use surveillance, and inspection; investigates incidents; monitors produce for pesticide residues, and imposes sanctions for violations of pesticide laws and regulations.

California's pesticide regulations are more comprehensive than the federal minimum requirements, including local (county) permitting for restricted materials, periodic on-site observations of use locations both before and during use, full documentation and reporting of agricultural pesticide use, post-use (residue) monitoring of treated commodities, and field worker safety inspections. These programs have evolved through legislation, regulation, and policy to provide an unparalleled level of protection from the potential harmful effects of pesticide use for California's citizens, agricultural workers, and the environment.

Enforcement History

California began a pesticide regulatory program nearly one hundred years ago. The Legislature has established a comprehensive body of law to control every aspect of pesticide sales and use and to assure that the State has the tools to assess the impacts of that use. The first pesticide-related law was passed in this state just after the turn of the century and in the early decades of the program, the State concentrated on product quality in an age of widespread adulteration and misrepresentation of products. Beginning in the 1960s, as increasing attention was focused on the long-term environmental and health effects of pesticides, a whole body of modern, increasingly science-based pesticide law and regulation came into being.

In 1970, the U.S. EPA was created to bring cohesion to the expansion of federal environmental activities. During that same year, California enacted its own landmark environmental legislation. The California Environmental Quality Act (CEQA) is the State's principal statute mandating environmental impact review of development projects in California. It generally applies to all State and local agencies and to private activities that the agencies finance or regulate. CEQA also gave the Department of Agriculture clear authority to place restrictions on how pesticides could be used.

In 1972, amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) granted U.S. EPA primary authority to regulate pesticides in the United States. Under FIFRA Section 26, the Administrator of U.S. EPA may give states with approved state plans primary enforcement authority for all pesticide use violations. Before the Administrator approves a plan, the state must adopt adequate laws and regulations to meet the minimum standards under FIFRA, including certification and record-keeping requirements for pesticide applicators; the inspection of establishments where pesticides are held for distribution or sale; and enforcement of pesticide

labeling. California has consistently maintained primary enforcement responsibility for pesticide use violations within the State.

In 1976, the State Attorney General issued an opinion that CDFA had to comply with CEQA when registering a pesticide or granting a license, permit or certificate. In other words, under the terms of CEQA, the Department was required to prepare an environmental impact report (EIR) before registering a pesticide or issuing a permit to use a restricted pesticide. After a specially convened Environmental Assessment Team determined that this was not feasible, legislation was passed (Assembly Bill 3765) that provided for an abbreviated environmental review procedure as the functional equivalent to a full EIR.

As a practical matter, the legislation meant that the State pesticide regulatory agency and the CACs did not have to prepare an EIR on each activity approved. However, documentation of environmental impacts, mitigation measures, and alternatives was required. This necessitated a revision of Department regulations relating to pesticide registration and evaluation, public notice of proposed actions and decisions, and requiring permits to use certain restricted pesticides. The regulations also set up advisory committees to allow interaction between the Department and other State agencies that have responsibility for resources that may be affected by pesticides.

Licensing and Certification

The PEB administers the Department's Licensing and Certification Program. This program is responsible for examining and licensing pest control operators, crop dusters, pesticide dealers and brokers, and pesticide advisers; and for certifying pesticide applicators who use or supervise the use of restricted pesticides. The purpose is to ensure that persons selling, possessing, storing, handling, applying, and recommending the use of pesticides are knowledgeable in their safe use. Such licenses and certificates cannot be renewed unless the holder has completed certain minimum continuing education hours relating to pesticides or pest management within each two-year license or certificate period.

Restricted Materials and Permitting

The criteria to designate a pesticide as a restricted material in California include hazards to public health, farmworkers, domestic animals, honeybees, the environment, wildlife, or crops other than those being treated. Pesticides are given a restricted designation through regulation. Once restricted, a pesticide cannot be legally purchased or used without a permit from the CAC. All federally restricted-use pesticides have been designated as restricted materials in California. In addition, California has designated additional materials as restricted-use.

Pesticides may be proposed for designation as restricted materials at any time, often based on a review of data submitted by registrants or information derived from field studies or incident investigations. When a pesticide is designated a restricted material, the Director or the CACs may adopt specific conditions which govern the possession and use of the pesticide. Restricted materials, with certain exceptions, may be possessed or used only by or under the supervision of licensed or certified persons, and only in accordance with an annual permit issued by the CAC. A CAC may condition a permit by requiring that restricted material users employ specific use

practices to mitigate potentially adverse effects, or may deny the permit. Permits for the agricultural use of pesticides are the functional equivalent of environmental impact reports and as a result must be site- and time-specific. In addition, since permits are usually issued for a 12-month period, a notice of intent to apply the pesticide must be submitted to the CAC at least 24 hours before application. The notice must describe the site to be treated and the pesticides to be applied. It must also contain information on any changes in the environmental setting that may have occurred since the permit was issued. All notices of intent are reviewed by county staff who can halt the proposed application if conditions warrant it. A minimum of five percent of the use sites identified by the notices or sites on the permit are selected for pre-application inspections, which are primarily spot checks to ensure that information contained on the permit is accurate.

Worker Protection

With the establishment of the Worker Health and Safety Branch (WH&S) in the 1970s, DPR instituted training requirements for pesticide handlers and established a pesticide illness reporting and investigation system unique in the nation. California has required training for pesticide handlers and applicators since the 1970s. In 1987, DPR expanded the scope from agricultural pesticide use to all pesticide use situations. In 1992, DPR strengthened its training requirements by implementing a hazard communication program requiring employers to maintain and make available to their employees a written hazard communication program, pesticide use reports, and material safety data sheets. DPR also pioneered development of a national policy on the use of filtered-air enclosed cabs and closed mixing and loading systems as an alternative to personal protective equipment. DPR was the driving force in development of this U.S. EPA program, which follows the principles of industrial hygiene by replacing personal protective equipment with engineering controls. In 1992, U.S. EPA adopted a new federal Worker Protection Standard using California's worker health and safety program as its model.

County Pesticide Use Surveillance

In addition to administering the restricted materials permitting system, the CACs enforce other State laws relating to pesticide use at the local level. The CACs inspect the operations and records of growers, pest control operators, pesticide dealers, and agricultural pest control advisers; register licensed pest control businesses, pest control aircraft pilots, and agricultural pest control advisers; conduct pesticide incident investigations; provide training to pesticide users; and, under contract with the DPR, collect fresh produce samples for State pesticide residue monitoring programs.

The PEB, as liaison for the Director of DPR, oversees pesticide use enforcement activities of the county agricultural commissioners. PEB field personnel evaluate county programs through in-depth inspections of county enforcement records to identify the number and type of inspections; completeness of permits; accuracy and thoroughness of pesticide incident investigations; appropriateness of enforcement actions; and adequacy of other aspects of a county's enforcement program. Branch staff also provide training to county staff, and provides guidance on policy and regulatory issues.

County commissioners conduct thousands of compliance inspections each year at storage, use, mixing, and loading sites; locations where pesticides are sold and stored; and at locations where required records are maintained.

By law, pest control businesses, agricultural pest control advisers, and pest control aircraft pilots must register with each county in which they operate. Any registration may be revoked for cause as provided for in the FAC.

In 1992, DPR and the CACs began working together on developing uniform enforcement guidelines, which were finalized in 1994. The guidelines acknowledged the necessity of a uniform enforcement response policy while maintaining the ability to recognize local conditions in decision making. Under the new guidelines, violations of the State's pesticide regulations have been categorized as "general" or "substantive" violations. "General category" violations primarily involve paperwork oversights. The stiffest penalties have been reserved for violations classified as "substantive." Violations are categorized and then assessed using a decision tree to determine an appropriate response or option. Since the decision tree takes the violator's compliance history into account, more violations prompt more severe action. To achieve statewide consistency, counties must use these guidelines for each incident. If a county's response differs from the guidelines, a written decision report must be prepared that describes the factors that influenced the outcome of the alternate decision.

To obtain compliance when violations are found, CACs have a range of options, including administrative actions, civil and criminal actions, and crop quarantine and seizure.

In 1994, DPR and the CACs also began a pilot project to evaluate county enforcement contracts. This project led to the development of negotiated workplans that prioritize specific pesticide use monitoring and enforcement activities at the local level. Emphasis falls on those enforcement activities that directly protect human health and the environment. This planning process is conducted each year, allowing DPR and CACs to continually evaluate program priorities.

Investigating Incidents and Illnesses

Incident Investigation - DPR or the CACs must investigate all reported incidents involving adverse human or animal health effects, alleged misuse of pesticides, or pesticide damage or injury to crops, property, or the environment. Information gathered during these investigations helps determine possible violations of pesticide laws and subsequent enforcement actions. Investigations are also a critical element in evaluating pesticide use patterns and the effectiveness of the regulatory system.

The CAC's office in the county where the incident occurred is the lead investigative agency. The county staff works in consultation with a Senior Pesticide Use Specialist in the PEB, who can in turn draw on the expertise of other branches in the Department. For example, WH&S and Medical Toxicology staff provide assistance for incidents involving illnesses. Environmental Monitoring staff may assist when incidents involve environmental effects, and the Pesticide Registration Branch can provide experts in plant physiology and chemistry for incidents that adversely affect fish and wildlife. In some incidents involving human illness or

injury, WH&S scientists become directly involved in the investigation, especially when there is no implication that pesticide misuse caused the injury.

Human effects incidents may involve pest control aircraft mishaps, pesticide handler accidents, exposure to residues in treated areas (fields, offices, homes), and exposure from drift. Property incidents may involve plant damage resulting from drift of a herbicide, bee kills, domestic animal poisonings, residues that result in the inability to market a crop or animal, or phytotoxic effects due to persistent residues in the soil. Environmental effects may include contamination or damage to the environment, such as fish or wildlife kills; lake, stream, ground water contamination; crop losses or property damage, and air pollution.

Pesticide incidents come to the attention of DPR and the CACs in a variety of ways: pesticide illness reports from physicians; citizen or employee complaints; reports from other government agencies; notification from pest control operators, growers, or labor contractors; or as a result of State and county surveillance and compliance monitoring activities. Certain incidents trigger special handling and are considered "priority" investigations. Counties must report them to DPR by the most expedient method. DPR in turn reports priority incidents to U.S. EPA, the State Department of Health Services, State Department of Fish and Game, and other affected government agencies.

Criteria triggering priority investigation status include episodes involving death, illness or injury to five or more persons in a single incident; significant environmental contamination; property loss; fish and wildlife kills; or episodes occurring at or near California's state, tribal, or international borders. Cooperating agencies may become involved in priority incident investigation from the onset, bringing their special expertise to bear.

Incident reports are routinely forwarded to the CACs for investigation unless they pertain to a situation where the FAC places primary investigative responsibility with DPR -- such as pesticide registration, product quality, and product labeling. DPR and the CACs take joint responsibility for investigation of illegal pesticide residues on produce.

Investigative reports are prepared at the conclusion of each incident investigation and enforcement actions may be pursued. DPR attorneys monitor and assist in the development of case files, and they may prosecute administrative cases or serve on prosecution teams with county district attorneys or the State Attorney General's office.

Copies of all final illness investigative reports are sent to WH&S for analysis. Ultimately, illness investigations fulfill a vital feedback function in the California pesticide regulatory system. Along with data from numerous other sources, results of these investigations provide critical information for policy decisions. Such decisions may lead to more protective laws and regulations, new strategies to mitigate potential hazards, or cancellation of pesticide uses which pose unacceptable risks.

Illness investigations - DPR administers the State's occupational pesticide safety enforcement program with field enforcement carried out by staff members of each CAC's office. PEB and WH&S staff provide coordination, oversight, and technical and legal support to the counties.

California is the only state with a comprehensive pesticide-illness monitoring system. DPR receives most reports of pesticide-related illness by one of two routes: from the workers compensation program and directly from physicians. In California, any employed person may visit a physician and report that an illness or injury occurred on the job. The physician then examines the worker and submits a "Doctor's First Report of Occupational Injury or Illness" (DFROII) to the appropriate insurance company or to the State Compensation Insurance Fund for payment of the professional fee. The DFROII's are also sent to DIR. DPR staff then must sort through the stacks of reports at DIR to, hopefully, select possible pesticide-related cases. Staff in WH&S review the injury reports and refer them to the appropriate county for investigation.

DPR also receives illness data through direct reporting by physicians. Since 1971, California physicians have been required by law (Section 165200 of the Health and Safety Code) to report all pesticide-related illnesses or injury to the local health authority (usually a county department of health). The health officer must send copies of the Pesticide Illness Report to the CAC, OEHHA, and DPR. Cases are recorded in the Department's Pesticide Illness Surveillance Program system. The types of incidents captured by this system reflect pesticide-related problems in the workplace and are tracked for trends that would indicate endemic problems versus unusual occurrences.

Pesticide Residue Monitoring

The State of California began analyzing small quantities of fresh produce for pesticide residues in 1926. Today, the Residue Monitoring Program has grown to become the most extensive State residue monitoring program in the nation. It is the final check in an integrated network of programs designed to ensure the safe use of pesticides. To fulfill this responsibility, DPR tests samples of domestically produced and imported fresh produce collected in the field and from the channels of trade. DPR has two residue monitoring programs: Marketplace Surveillance and Priority Pesticide. CACs, under contract to DPR, do all sampling for the Priority Pesticide Program and some Marketplace Surveillance Program sampling. DPR's pesticide residue monitoring is directed toward enforcement of U.S. EPA tolerances.